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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 CR 630 (ER)

5 MARK S. SCOTT,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 October 28, 2019  
2:35 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14  
15 GEOFFREY S. BERMAN,  
16 United States Attorney for the  
17 Southern District of New York  
18 CHRISTOPHER DiMASE  
19 NICHOLAS FOLLY  
20 JULIETA V. LOZANO  
21 Assistant United States Attorneys

22 COVINGTON & BURLING LLP  
23 Attorneys for Defendant

24 BY: ARLO DEVLIN-BROWN  
25 KATRI STANLEY  
-AND-  
DAVID M. GARVIN

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(Case called)

MR. DiMASE: Good afternoon, your Honor. Christopher DiMase, for the government. Also joining me at counsel table are AUSA Nicholas Folly and Special Assistant United States Attorney Julieta Lozano.

THE COURT: Good afternoon.

MR. DEVLIN-BROWN: Good afternoon, your Honor. Arlo Devlin-Brown, for Mr. Scott, who's seated one step over from my right, and Katri Stanley, also with Covington & Burling.

MR. GARVIN: Good afternoon, your Honor. David Garvin, on behalf of Mr. Scott, also.

THE COURT: Good afternoon to you all.

This matter is on for a final pretrial conference. My clerk will be handing to you my draft of the voir dire form. It is what I will be giving to the venire. I still expect from the parties the Appendix A, which lists the individuals, entities, and locations, so as soon as you have that document ready, just send it over to chambers. I would also ask that you read this document very carefully. No pride of authorship, so any grammatical errors, any typos, any misspellings, bring to my attention. This is a document that will be given to the venire, and I want them to be under the impression that we know what we're doing around here. So I welcome any comments that you have.

Let me just make sure that the parties understand that

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1 the trial itself will not be taking place in this courtroom,  
2 but, rather, Courtroom 318 in this building. I don't know  
3 what, if any, technology you are going to be using. I can  
4 assure you that I am unfamiliar with the technology in  
5 courtrooms generally and completely ignorant of any technology  
6 that there may be in Courtroom 318. So, again, I will put on  
7 the parties the burden of figuring out what technology they are  
8 going to use, whether it exists, whether you need to bring it,  
9 and how to use it. So that's that.

10 I do have the parties' motions in limine and their  
11 responses to the respective parties' motions, and we can go  
12 through that. What I also want to do today is just make sure  
13 we go over, at least at some level, the mechanics of jury  
14 selection.

15 Is it still the parties' view that this case will take  
16 approximately three weeks?

17 MR. DiMASE: Yes, your Honor, I think two to three  
18 weeks, depending on the length of the defendant's case.

19 THE COURT: Because if it goes beyond that, then we're  
20 into Thanksgiving week. I'm happy to come in and sit, though I  
21 don't know that the jurors will be that thrilled.

22 Also, I don't think that we will be sitting on  
23 Veterans Day, which is November 11, so that is a day that we  
24 will have off. We will be sitting Fridays, and I do use the  
25 truncated trial day, which many of my colleagues use, so that

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1 we will be going with the jury from 9:30 until 2:30 in the  
2 afternoon, we'll have two 15-minute breaks, and we'll break at  
3 2:30. And we will be sitting on Fridays.

4 I find that that schedule gives us almost as much time  
5 as with -- one half hour short of the same -- standard  
6 schedule, which is 9:30 to 5:00, Monday through Thursday. So  
7 we will have as much time, generally speaking, as a standard  
8 day.

9 Obviously, we will have standard days for jury  
10 selection because the jury will expect to work normal business  
11 hours while the jury is being chosen. In my experience, it  
12 takes me approximately three-quarters of a day to pick a  
13 criminal jury. I don't know that this one will raise  
14 particularly controversial issues from a juror perspective, so  
15 I do expect to have a jury that first day. And depending on  
16 how much time we have, the parties should be prepared to open  
17 on Monday.

18 Again, I don't put time limits on these things, but it  
19 would seem to me that a trial that's going to take two, perhaps  
20 three, weeks should not take more than 20, 25 minutes to open,  
21 but, again, unless there is going to be abuse of that range,  
22 I'm not going to put any limits on counsel.

23 Yes, Mr. DiMase.

24 MR. DiMASE: Just on the scheduling point, your Honor,  
25 if we have enough time Monday, should we be prepared to open?

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1 Is it fair to say the first witnesses would not, then, go on  
2 until Tuesday, or should we be prepared to call a witness on  
3 Monday?

4 THE COURT: You should be prepared to call a witness  
5 on Monday, but, in my experience, in criminal trials, I don't  
6 think that I've ever gotten to a witness on opening day.

7 MR. DiMASE: Fair enough, your Honor.

8 THE COURT: So that's that, on sort of the very  
9 general things.

10 You have the voir dire form and get any comments to me  
11 as you have them.

12 So let's go to the motions in limine. I guess the  
13 government can go first with respect to its motions.  
14 Mr. DiMase, Mr. Folly, Ms. Lozano, I'm happy to hear you on  
15 your first motion.

16 MR. DiMASE: Your Honor, would you like -- are there  
17 particular motions you'd like us to focus on, or would you like  
18 us to go through them one at a time?

19 THE COURT: Some are obviously easier than others.  
20 Let's talk about the coconspirator statements that you want  
21 admitted at trial.

22 MR. DiMASE: Yes, your Honor. Mr. Folly is prepared  
23 to address that.

24 THE COURT: Very well.

25 MR. FOLLY: Yes, your Honor.

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1           So, as your Honor is well aware, the basic rule under  
2 801(d)(2)(E) is that if there was a conspiracy, and that  
3 conspiracy included the declarant of the statement at issue as  
4 well as the defendant, and the statement was made during and in  
5 furtherance of that conspiracy, then that statement is  
6 admissible at trial. Each of those requirements is clearly met  
7 as to the statements that are at issue in this case.

8           The defendant is charged in two conspiracies, and  
9 there will be overwhelming evidence at trial that he joined  
10 those conspiracies. The statements at issue here are also  
11 clearly in furtherance of those conspiracies, and I'll speak in  
12 a little more detail as to what some of those particular  
13 statements are in just a moment.

14           So, the real issue that we're really left with is  
15 whether the defendant withdrew from the conspiracy prior to  
16 those statements being made. If he did, obviously the  
17 statements could not be admitted against him. Here, there is  
18 clear evidence that he did not withdraw from the conspiracy.  
19 And on that last point, the law is very clear that the burden  
20 is on the defendant to demonstrate that he withdrew from the  
21 conspiracy. And the law on withdrawal is also very clear. He  
22 has to show he took affirmative steps to withdraw. There's not  
23 a shred of evidence in this case that he took a single  
24 affirmative step to withdraw. All the way through the moment  
25 in time when he was arrested, and even his postarrest

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1 statement, is further evidence that he had not withdrawn from  
2 the conspiracy. He deliberately, in his postarrest statement,  
3 covers up for other coconspirators. He says things like Ruja  
4 Ignatova and OneCoin had nothing to do with the Fenero Funds.  
5 It's patently false. He says things like he didn't remember  
6 who the name of Irina Dilkinska was, one of the core  
7 coconspirators at this trial. Again, clearly false.  
8 Supposedly, Irina Dilkinska was one of the investors who put in  
9 hundreds of millions of dollars into his so-called investment  
10 funds. So, again, that's just further evidence that all the  
11 way through the moment he was arrested, he was still in this  
12 conspiracy.

13 Now I want to turn to some of the specific statements  
14 that are at issue. There's a series of statements, which are  
15 primarily contained in text messages in June of 2018, which  
16 show that there was a coordinated effort by some of the other  
17 coconspirators, such as Irina Dilkinska, who, again, was one of  
18 the core coconspirators from OneCoin, who was working directly  
19 with the defendant to help launder the OneCoin proceeds and who  
20 was still an employee of OneCoin in June 2018, as well as  
21 another high-ranking member at OneCoin, they were communicating  
22 directly with Mark Scott. Irina Dilkinska says in one of the  
23 statements that she is, quote, talking to Mark Scott. He wants  
24 to know what's up with Phoenix, so to help. He says he may  
25 help.

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1           To add context to that statement, Phoenix is an entity  
2 that was controlled by another coconspirator named Amer  
3 Abdulaziz. And Mark Scott, during the conspiracy, sent nearly  
4 approximately \$200 million of OneCoin fraud proceeds to the  
5 Phoenix investment fund, which was controlled by that  
6 coconspirator.

7           So, again, this text message demonstrates Irina  
8 Dilkinska, as of June of 2018, is talking to Mark Scott and  
9 coordinating his assistance to help with the money that Mark  
10 Scott had sent to Phoenix, which the folks at OneCoin had run  
11 into some trouble getting that ultimately to the company.

12           Again, as part of that same text message exchange,  
13 Dilkinska reported that Scott had stated it is better to let me  
14 know what is going on. We -- I think it should have said we  
15 have, but it says: "We are audits going on in BVI and will  
16 submit to the financial commission."

17           Again, a deliberate effort to coordinate, to make sure  
18 everyone is in the loop as to what's going on with respect to  
19 these funds, which the trial evidence will clearly show were  
20 being laundered and were proceeds from the OneCoin fraud  
21 scheme.

22           So those text messages showed just the opposite of  
23 withdrawal. They show Scott being directly still involved in  
24 that conspiracy. He's actively working with OneCoin members to  
25 help get the money back to the company, and he's asking that



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1 they keep him in the loop about things that are going on, so  
2 that he can make sure this audit that's coming up goes  
3 smoothly.

4 Then, about a week later, Irina Dilkinska gives an  
5 update about these conversations that she's having with Mark  
6 Scott, and says, "Can you tell FS," which stands for Frank  
7 Schneider, who is another key coconspirator, as the evidence  
8 will show at trial. She says: "Can you tell Frank Schneider  
9 that Mark himself will try to push Phoenix to release funds,  
10 too?" Again, this is clear evidence that Mark Scott is  
11 remaining actively involved and that he is making an effort to  
12 try to get the Phoenix entity, which had received approximately  
13 \$200 million from OneCoin proceeds directly from Mark Scott's  
14 Fenero Funds to help get that money back to OneCoin. And,  
15 again, that is in the summer of 2018, that's in June.

16 THE COURT: What about the statement attributed to  
17 your cooperating witness that he or she was told prior to the  
18 summer of 2018 by Dilkinska and Ignatova that Scott was a money  
19 launderer? Are you able to place more definitively in time  
20 that statement?

21 MR. FOLLY: Your Honor, that statement -- my  
22 recollection is that statement takes place after that  
23 cooperating witness has risen to a position of prominence  
24 within the company, and it takes place prior to June 2018. So  
25 it takes place during a time period when this cooperating

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1 witness was in a position of power at OneCoin. And in addition  
2 to that, it's before, clearly, as the evidence shows, there's  
3 any indication whatsoever Mark Scott had withdrawn from this  
4 conspiracy. There's not a shred of evidence in the record he  
5 ever withdrew from this conspiracy.

6 The last point connected to this string of text  
7 messages is: It's within this context of Irina Dilkinska  
8 communicating with Mark Scott that the cooperating witness  
9 receives an update from Frank Schneider, who alerts him about a  
10 problem that they may have in communicating with Mark Scott and  
11 in enlisting Mark Scott's help to get the money back from  
12 Phoenix, and that problem, as you saw set out in the papers, is  
13 that during law enforcement -- U.S. law enforcement  
14 presentation, which identified Fenero, which identified key  
15 coconspirators, such as Ruja Ignatova, Sebastian Greenwood, and  
16 others, there was no mention of Mark Scott, and it makes Frank  
17 Schneider concerned that Mark Scott may be a high-placed U.S.  
18 informant.

19 THE COURT: Can you explain to me what that is, that  
20 law enforcement presentation? Is that a press conference?

21 MR. FOLLY: That was not a public presentation.

22 THE COURT: It was not a public presentation?

23 MR. FOLLY: No, your Honor, it was not. It was a  
24 private law enforcement to law enforcement presentation.

25 THE COURT: And how did the coconspirators -- alleged

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1 coconspirators get a hold of it, if you know?

2 MR. FOLLY: Your Honor, our understanding is that this  
3 coconspirator has high-placed contacts with -- that have access  
4 to confidential law enforcement information, and that was one  
5 of his roles in the OneCoin conspiracy, was to provide  
6 information to Ruja Ignatova and others about current and  
7 confidential ongoing law enforcement investigations into those  
8 coconspirators.

9 THE COURT: Do you know when that presentation was  
10 prepared?

11 MR. FOLLY: I'm sorry?

12 THE COURT: Do you know when it was prepared?

13 MR. FOLLY: Just a moment?

14 (Counsel confer)

15 THE COURT: It's not a major point. I'm just trying  
16 to see if I can work out some timeline.

17 MR. FOLLY: Your Honor, what I just wanted to point  
18 out is that the -- we don't believe it to be appropriate to  
19 comment on the specific nature of what presentation that was,  
20 but the message itself does specify that it was a presentation  
21 that occurred in January of 2017.

22 THE COURT: Okay.

23 MR. FOLLY: Which, again, is right in the middle of  
24 when Mark Scott is actively working in connection with this  
25 conspiracy.

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1           So, it's in that context that Frank Schneider sends  
2 this update about the ongoing efforts on behalf of Irina  
3 Dilkinska and others at OneCoin to coordinate with Mark Scott  
4 and is basically saying be very, very careful with anything  
5 that you are doing right now with Mark Scott because he may  
6 actually be a highly placed U.S. informant.

7           Just to zoom back out to the question we started with,  
8 there's no question there was a conspiracy here. There's no  
9 question Scott joined it. That's going to be clearly  
10 established at trial. There's also no question that these  
11 statements were directly in furtherance of the conspiracy.  
12 Again, the only question is whether Scott withdrew. And this  
13 evidence that's going to be presented at trial shows he  
14 absolutely did not withdraw. The only argument that he  
15 withdrew is that he had, quote-unquote, returned the purported  
16 investor money back to the investors. But --

17           THE COURT: When did that happen?

18           MR. FOLLY: I think the bulk of the money was returned  
19 probably in spring of 2017, the bulk of the money at that  
20 point.

21           But, again, this completely -- this point about  
22 returning the money -- first of all, he actually held onto  
23 approximately a million dollars, which he was claiming he was  
24 going to use in case there was any legal disputes connected to  
25 the investments, so he hadn't returned all the money. That's

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1 one point.

2 But the more important point is that after that point  
3 in time, he is actively coordinating and working with members  
4 of OneCoin to get fraud scheme proceeds from the same money  
5 launderer he had sent additional fraud scheme proceeds to  
6 directly back to the company.

7 THE COURT: Talk to me, if you would, about the  
8 postarrest Scott statements that you're looking to put in.

9 MR. FOLLY: Again, the postarrest statement, there  
10 were statements that were made by Irina Dilkinska to the  
11 cooperating witness within days of Mark Scott's arrest, again,  
12 that were clearly -- that conspiracy was ongoing. The only  
13 limited question there is whether Scott is still a part of it  
14 or whether the conspiracy -- his participation ended just  
15 because he was arrested. His statements themselves in his  
16 postarrest suggest he did the exact opposite of what the Second  
17 Circuit requires, he lied to the authorities about numerous  
18 connections to the very coconspirators at issue here. He did  
19 not make any sort of noisy withdrawal, as is required under the  
20 law. There's not a shred of evidence that he disavowed his  
21 criminal association with this conspiracy, as the law requires.  
22 Here, the evidence shows just the opposite; he deliberately  
23 intends to cover up for Ruja Ignatova and Irina Dilkinska in  
24 his postarrest statement. So, again, we cited in our brief  
25 cases that make it clear that just by nature of being arrested,

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1 it's not sufficient to show that you've withdrawn from a  
2 conspiracy. The Second Circuit case law on this is very, very  
3 clear, and there's no evidence in this record that suggests  
4 that the defendant can show, as is required here, that he  
5 actually withdrew from this conspiracy. And it's his burden.  
6 The evidence we've proffered shows the opposite.

7 THE COURT: Assuming all that is true, how is  
8 Ms. Dilkinska's statement that she was going to be the next one  
9 to get arrested, and she didn't know what to do, et cetera, how  
10 is that in furtherance of the conspiracy?

11 MR. FOLLY: It's in furtherance of the conspiracy  
12 because there is a direct threat that is presented through Mark  
13 Scott's arrest to those coconspirators who are still in it,  
14 including Dilkinska and the cooperating witness who she's  
15 speaking with. They are trying to figure out what should we do  
16 now, how should we respond to this, how do we make sure this  
17 threat doesn't come to our doorstep, what do we do as to  
18 certain records that are tied to Mark Scott, should we be  
19 destroying them. That is one of the proposals that is proposed  
20 by Irina Dilkinska in response to this incident.

21 So, all of those things suggest that this is a  
22 deliberate attempt to cover up the conspiracy, and that is what  
23 the law makes clear are the types of statements that are in  
24 furtherance of the conspiracy.

25 THE COURT: So let me ask you about that. What

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1 conspiracy are you talking about?

2 MR. FOLLY: Your Honor, this is directly connected to  
3 all the charged conspiracies as well as the uncharged wire  
4 fraud conspiracy. And that might be a good place for us to  
5 turn next, is Mark Scott's involvement in that conspiracy.

6 Your Honor, just to reemphasize this point, which I  
7 think is clear in our briefs, is that Irina Dilkinska is a key  
8 coconspirator that Mark Scott communicates with on a regular  
9 basis through the entire conspiracy. At trial, there's going  
10 to be numerous emails showing their tight relationship with  
11 each other and their coordinated actions as to the charged  
12 conspiracies on trial in this case.

13 The other conspiracy, the uncharged wire fraud  
14 conspiracy, again, all the government needs to show there is  
15 that by a preponderance of the evidence, Mark Scott was a  
16 member of that conspiracy. And there's numerous pieces of  
17 evidence that demonstrate that.

18 First and foremost, the evidence at trial will show  
19 that OneCoin, in order to continue its operation as a criminal  
20 enterprise, relied on money launderers just like Mark Scott.  
21 They had banking issues very early on in their existence,  
22 where, because of the information in the public domain  
23 suggesting OneCoin was a fraud scheme, banks would not continue  
24 to process money that was coming from OneCoin investors into  
25 those accounts, and once banks caught wind that that's where

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1 the money was coming from, they would shut it down.

2 So the solution to that problem was a network of money  
3 launderers, which included the defendant. They -- when they  
4 were receiving OneCoin deposits from the investors into bank  
5 accounts, those bank accounts were not OneCoin bank accounts;  
6 they relied on third-party companies, such as IMS, which was a  
7 company that received a large portion of OneCoin investor money  
8 and then sent that money directly to Mark Scott's accounts, so  
9 that he could launder it and get it back out the other side.

10 So the conspiracy, the wire fraud conspiracy, could  
11 not operate without this money laundering network. There was  
12 no way for them to function because they could not bank, they  
13 could not get investor money back to the company to pay for  
14 basic operations, to pay for the coconspirators' employment at  
15 OneCoin --

16 THE COURT: Well, let me ask you this: Are you  
17 proving too much by proving that he was a member of this  
18 uncharged conspiracy? Why can't you just get these statements  
19 in on the basis of the charged conspiracies?

20 MR. FOLLY: Your Honor, some of these statements, on  
21 their face -- there is an argument that they are also in  
22 furtherance of the money laundering conspiracy, but some of  
23 these statements, early on, are between key coconspirators like  
24 Ruja Ignatova and Sebastian Greenwood. They are the emails  
25 that they were sending to each other as they were basically



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1 designing this fraud scheme. It's some of the most core  
2 evidence of the existence of the fraud scheme.

3 THE COURT: Let me hear from the defense.

4 MR. FOLLY: Yes.

5 MR. DEVLIN-BROWN: Thank you, your Honor. Unless your  
6 Honor prefers otherwise, I could start, please, with the  
7 uncharged conspiracy issue?

8 THE COURT: Sure.

9 MR. DEVLIN-BROWN: That issue is very troubling for  
10 the defense, because, obviously, Mr. Scott was not charged with  
11 that crime. There's never been any indication by any  
12 proceeding before the most recent motion that he's alleged to  
13 be an unindicted coconspirator. And all the government has  
14 said, both in their filing and today in court, is the  
15 conspiracy needed money launderers, and, therefore, Mr. Scott  
16 is part of the wire fraud conspiracy. To be part of the wire  
17 fraud conspiracy, your Honor, you need to have an agreement  
18 about the purpose of the conspiracy. And the wire fraud  
19 alleged here is a scheme to rip off investors in OneCoin by  
20 selling them a reported cryptocurrency that actually doesn't  
21 have a blockchain that isn't mined based on various  
22 misrepresentations. They've offered no evidence whatsoever,  
23 even today, that Mr. Scott was ever part of any conspiratorial  
24 agreement to do that. And, obviously, they've said they won't  
25 argue it to the jury, but it's a deeply troubling notion that

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1 they would suggest that.

2 THE COURT: The government is correct, though, is it  
3 not, that he doesn't need to be charged with a conspiracy -- a  
4 particular conspiracy in order for coconspirator statements to  
5 be allowed in under the rule?

6 MR. DEVLIN-BROWN: Well, if the coconspirator  
7 statements -- he's charged with a bank fraud and money  
8 laundering conspiracy. So if your Honor were to conclude that  
9 by a preponderance of the evidence, he was a member of those  
10 conspiracies for some period, and the particular coconspirator  
11 statements that the government seems to be referring to now  
12 between Ruja Ignatova and Greenwood were in furtherance of the  
13 bank fraud or money laundering conspiracy, that would be -- if  
14 they were in furtherance, yes, those could be admitted. That  
15 would not be a barrier.

16 The government didn't brief that issue really. We did  
17 attach one of the communications between Greenwood and Ruja  
18 Ignatova. It's a year before anyone's even met Mr. Scott, and  
19 there is no indication that they're talking about banking or  
20 issues like that there. So I think you'd have to look at that  
21 on a case-by-case basis.

22 THE COURT: Okay.

23 MR. DEVLIN-BROWN: So let me go, if you would, to the  
24 coconspirator statements that the government is seeking to  
25 introduce through its cooperating witness. The government's

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1 correct, of course, that Rule 803 provides substantial opening  
2 for the government for coconspirator statements, but that's not  
3 the only issue when the Court is evaluating whether a statement  
4 should be admissible. There's relevance, there's the degree of  
5 reliability, and other factors.

6 And that's why I think -- I'll go through each of the  
7 statements, but I do want to step back for one moment. All of  
8 the statements the government seeks to offer through its  
9 cooperating witness are through a witness who has met Mr. Scott  
10 once in passing, who never interacted with Mr. Scott at all,  
11 except when acting as Ruja Ignatova's personal assistant to set  
12 travel reservations, and that's because this fellow didn't have  
13 any role in -- he's not even accused of having any role in the  
14 OneCoin operations until the summer of 2016 and doesn't take on  
15 the more substantial role until well after Ruja Ignatova, in  
16 October 2017, has gone missing.

17 So, these are all statements -- someone who has no  
18 idea, really, about Mr. Scott, never dealt with him in any  
19 coconspirator way, he's going to testify that this other woman,  
20 Irina, said these statements to him. So there's questions  
21 about reliability sort of right there. They're all multiple  
22 levels of hearsay.

23 And I can go through --

24 THE COURT: But the rule also does not require that  
25 the cooperating witness even know Mr. Scott, and he, in fact,

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1 did meet him, but even if he never met Mr. Scott, that would  
2 not be an obstacle to the government's use of that testimony.

3 MR. DEVLIN-BROWN: Sure. But it does still have to be  
4 in furtherance of the conspiracy. So when you're talking about  
5 a cooperating witness who, prior to June 2016, played no role  
6 in the conspiracy, he had a completely different job, and then  
7 had a very limited role, not dealing with banking, not dealing  
8 with anything like that, you have to question whether  
9 statements made to him by this person are really in furtherance  
10 of the conspiracy.

11 If I can just start with the statements prior to the  
12 summer of 2018, that's the first category of statements the  
13 government talks about, we've tried to break them down in our  
14 brief, your Honor, but that's a statement that I think is a  
15 perfect example because the government doesn't put a time in.  
16 They say there's a statement prior to the summer of 2018 where  
17 their witness was supposedly told by Dilkinska and Ignatova --  
18 I'm going to practice this before trial, your Honor -- that,  
19 quote, in sum and substance, Scott was a money launderer who  
20 was brought into the OneCoin scheme by Armenta. So there's  
21 just not enough for the Court to go on, no date, no context.  
22 Is that just gossip that he heard, your Honor, or is it told to  
23 him for some conspiratorial purpose? And if we don't even know  
24 when it was said -- and I would submit further, we have no idea  
25 what was said. And this is a problem throughout the

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1 government's motion and why it's a bit of a moving target. The  
2 government has introduced this statement as, in sum and  
3 substance, Scott was a money launderer who was brought into the  
4 OneCoin scheme by Armenta. None of their witnesses talked like  
5 that in real life, as far as we can tell.

6 Looking at the 3500, it appears that the statement  
7 was -- and we cite this in our brief -- Mark Scott one time  
8 heard he was one of Armenta's people, he was working for or  
9 with Armenta. Ruja and Irina told him that. So did Mya, a  
10 woman from the Dubai office.

11 THE COURT: But these are obviously oral statements  
12 that were made some years ago, and some people say it  
13 differently two years, three years down the line as to what  
14 precisely what was said.

15 MR. DEVLIN-BROWN: But there's no indication at trial  
16 that this witness would say the words that the government just  
17 put into his mouth, that he was brought into the scheme as a  
18 money launderer. There's just no indication of that.

19 But, anyway, our position, really, with this  
20 pre-June 2018 statement is there's no indication of when it was  
21 told to him, for what purpose it was told to him. The witness  
22 appears to have no real specific memories of that. So to offer  
23 that without context, the Court can't really conclude it was  
24 made in the context and for the purpose of furthering the  
25 conspiracy.

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1           Let me move to the statements in June of 2018, your  
2 Honor. That's the next category of statements. And this is  
3 where the government has alleged that, essentially, Irina was,  
4 in some way, working with Mr. Scott again and filling the  
5 cooperating witness in on that.

6           It's just not true, for one thing. That was not the  
7 case at all. And the government has lots of other evidence in  
8 this case, including lots of emails during this period. That's  
9 just not true. Mr. Scott did, in fact, return the bulk of the  
10 money to the investors by March or April of 2017. By that  
11 summer, all he had was this legal reserve. And there are  
12 almost no communications with Irina at all from the summer of  
13 2017. Really, there may be one or two in the summer of 2018,  
14 but they basically had stopped their relationship.

15           If you look at the statements the government wants to  
16 offer, they don't actually show that Mr. Scott was agreeing in  
17 any way to help out with anything in the conspiracy.

18           THE COURT: Well, except he kept a million dollars of  
19 potential future legal fees, correct?

20           MR. DEVLIN-BROWN: He did keep a reserve when he  
21 severed the relationship with the investors in his fund, and as  
22 time went on, your Honor, he did, frankly, have more concerns  
23 about whether he was going to need to keep that money, given  
24 news reporting after he had left the relationship.

25           THE COURT: So to put it in terms the government might

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1 use: He continued to hold out the possibility that he would  
2 continue to do work in furtherance of the conspiracy?

3 MR. DEVLIN-BROWN: No. It would be that -- this is an  
4 adversarial relationship at this point, your Honor. When  
5 business partners break up, for example, there might be money  
6 held in escrow for disputes that may arise.

7 THE COURT: Is there evidence that the business  
8 partners broke up?

9 MR. DEVLIN-BROWN: Yes. The evidence is that he had  
10 communications with his investors, including Irina, to return  
11 all of the funds, save for 1.25 million euro legal reserve,  
12 which he explained the reason he needed to keep that, to see  
13 whether there would be problems that would require him to spend  
14 money, he wanted to have that available.

15 So, looking at the statements the government has  
16 offered in June 2018, it's true, there is an email that says --  
17 or text message chain, talking to Mr. Scott, he wants to know  
18 what's up with Phoenix so to help. That's what Irina texts the  
19 CW. But then in the very same chain, rather than quoting this  
20 offer to help, she writes: "This is his last message just now.  
21 It's better that we know what is going on. We have our audits  
22 going on in BVI, and we will submit to the financial  
23 commission."

24 So that doesn't sound like an offer to help. It  
25 sounds like an offer for Mr. Scott to have some understanding

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1 as to what may still be going on because he has a legal reserve  
2 pending.

3 And what further proves that, your Honor, if you look  
4 at the rest of the text chain and the other evidence in that  
5 period, Mr. Scott doesn't do anything to help. And, in fact,  
6 one reason he doesn't, and one piece of evidence showing how  
7 estranged he is from these alleged coconspirators, is that this  
8 individual, Frank Schneider, the supposed investigator for the  
9 scheme, warns Irina and the cooperating witness not to have  
10 dealings with Mr. Scott because they believe erroneously that  
11 he could be a cooperating witness. That shows how far apart  
12 the relationship is at that point. And it adds another problem  
13 with that statement, your Honor: I don't think it's  
14 appropriate for the jury to hear a statement that is abjectly  
15 false. He was not a cooperating witness during this period.

16 THE COURT: But the government is not putting that in  
17 for its truth, obviously, since he was not cooperating with the  
18 government. Isn't that statement, strictly speaking, very much  
19 in furtherance of the conspiracy?

20 MR. DEVLIN-BROWN: It may be in furtherance of the  
21 conspiracy -- of whatever conspiracy is existing with the  
22 remaining members expressing their concern about Mr. Scott, who  
23 has not had any involvement with them for over a year.

24 THE COURT: But, I mean, in giving your understanding  
25 of case law, assuming that there is no evidence or assuming



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1 that I determine that he had not withdrawn from the conspiracy  
2 at this point, it's admissible against him.

3 MR. DEVLIN-BROWN: Yes, if your Honor were to  
4 determine that. And maybe let me pivot, then, to the third set  
5 of statements, because it's a fact-specific inquiry when  
6 someone leaves a conspiracy, and, frankly, the case law doesn't  
7 always provide very clear guidance. But the way you heard the  
8 government characterize it, they could have a statement someone  
9 says tomorrow about Mr. Scott that he's apparently still a  
10 member of the conspiracy. When does it exactly end, your  
11 Honor? He is arrested. That should certainly be a point when  
12 it ends. Even if not always, when you consider that he had  
13 returned all the money except for the legal reserve some 18  
14 months earlier, that he had almost no communication with his  
15 alleged coconspirators since that summer, when they talked  
16 about enlisting his help and declined to do so. So I think the  
17 arrest at that point -- there's no allegation that he did  
18 anything to further the conspiracy, that he sent anything to  
19 the conspirators, that he made plans with any of them.

20 THE COURT: Yes, but that's not the test, though,  
21 right? The test doesn't look to what he was doing, assuming  
22 that he had withdrawn; the test looks to whether the statements  
23 were in furtherance of the conspiracy or in furtherance of  
24 covering up an historical conspiracy, right? So what Mr. Scott  
25 was doing, necessarily, is not probative.

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1 MR. DEVLIN-BROWN: Right, but Mr. Scott was no longer  
2 involved in the conspiracy -- any conspiracy at that point.  
3 That's our position, your Honor.

4 THE COURT: Okay. I understand your position, and I  
5 am going to grant the government's motion to use these  
6 statements as statements in furtherance of the conspiracy.  
7 Even without any greater detail with respect to the statement  
8 that was made to the cooperating witness prior to the summer of  
9 2018, it's clear that the conspiracy had started and that he  
10 was described -- "he" being Mr. Scott -- as an individual who  
11 was assisting the conspiracy with money laundering services.  
12 Again, the particular language that was used, we'll see how it  
13 plays out at trial, but, certainly, it does appear to me,  
14 certainly to a preponderance, that these comments were in  
15 furtherance of the conspiracy.

16 Moreover, I do find that nothing has been presented  
17 here today that indicates to me that Mr. Scott withdrew from  
18 the conspiracy in the manner that the case law requires, you  
19 know, some more affirmative step to indicate that he was  
20 disavowing the objectives of the conspiracy. The comments that  
21 have been put before me show that as late as the summer of  
22 2018, he was still offering to help assist with the  
23 conspirators. And the fact that he was arrested, while an  
24 interesting factoid, does, also, not affect the analysis that  
25 comments made, in particular by Ms. Dilkinska, indicating what

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1 they should do in the face of Mr. Scott's arrest in order to  
2 continue to cover up the conspiracy, et cetera, will be  
3 admitted.

4 Next issue. Shall we turn to the experts?

5 MR. FOLLY: Your Honor, just on that last set of  
6 issues with respect to the coconspirators statements: What is  
7 your Honor's ruling at this time as to the wire fraud, the  
8 statements connected to the wire fraud conspiracy, the  
9 uncharged wire fraud conspiracy?

10 THE COURT: I think the case law is clear that the  
11 particular conspiracy does not have to be alleged so long as I  
12 find by a preponderance, I believe, that the conspiracy did  
13 exist and that the statements were made in furtherance of the  
14 conspiracy. From my perspective, with respect to this issue,  
15 whether it's the wire fraud conspiracy or the money laundering  
16 conspiracy, it's all of a piece. There was a scheme to defraud  
17 individuals by investing in this cryptocurrency. That scheme  
18 involved several activities, including the use of the wires,  
19 including the laundering of the proceeds, including the use of  
20 banks to launder the proceeds. So, clearly, from my  
21 perspective, if the government is able to prove the money  
22 laundering and bank fraud conspiracies, then the wire fraud  
23 conspiracy is comfortably encompassed within those.

24 Next?

25 MR. DiMASE: Your Honor, I think you had mentioned

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1 experts. I think you're referring to the defense experts?

2 THE COURT: Both, actually. So the government wants  
3 to use an expert on money laundering?

4 MR. DiMASE: Yes, your Honor, the government noticed  
5 an expert on money laundering. As indicated in its briefing,  
6 provided substantial information regarding the expected  
7 testimony of that witness, including a number of transcripts of  
8 his prior testimony.

9 The circuit and the Supreme Court are clear that there  
10 isn't a particular type of expertise that is required for  
11 somebody to be designated an expert. Anything that might help  
12 a lay juror understand a complex area can fit within the  
13 confines of expert testimony.

14 As the government made clear in its motion, first of  
15 all, Mr. Semesky has substantial experience as an expert in  
16 this area. He served for decades as a federal law enforcement  
17 officer working on money laundering matters. He's testified in  
18 upwards of 50 trials as an expert in the area of the means and  
19 methods of money laundering. And the bottom line is that the  
20 means and methods of money laundering, particularly in a white  
21 collar case involving the use of such things as shell  
22 companies, papering, in other words, using complex financial  
23 agreements to cover the movement of criminal proceeds, layering  
24 through a series of bank accounts located at different  
25 financial institutions, those means and methods of money

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1 laundering are not within the ken of the average juror, and the  
2 way that money laundering generally works is not within the ken  
3 of the average juror, particularly in the white collar space.

4 As we made clear, your Honor, Mr. Semesky is not going  
5 to be testifying as to any specific opinion regarding whether  
6 Mr. Scott's conduct constitutes money laundering. He would  
7 simply be testifying about how -- the means and methods of  
8 money laundering, particularly in the area of white collar  
9 cases, and we laid out some examples of what we expect that  
10 testimony to look like.

11 The Second Circuit has repeatedly upheld the  
12 admissibility of such testimony, and, in point of fact,  
13 Mr. Semesky's testimony itself has been upheld by the circuit  
14 in a case involving money laundering, and by a number of other  
15 circuits as well, so we think that the use of money laundering  
16 expert in this trial, given these complicated issues of fact,  
17 and the fact that this area in general is outside of the ken of  
18 the jury, is appropriate, and that the testimony of that expert  
19 should be admitted in this trial here.

20 THE COURT: I agree that this expert's testimony is  
21 appropriate and should be before the jury; however,  
22 Mr. Devlin-Brown, if you wish, I'll give you an opportunity to  
23 make a record.

24 MR. DEVLIN-BROWN: We stand by the position in our  
25 papers, your Honor. It's not an objection to Mr. Semesky

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1 personally. We recognize that it's permitted in some cases.  
2 We just don't think it's necessary here.

3 THE COURT: Let me talk about your expert while you're  
4 standing up, the expert on cryptocurrency. For many of the  
5 reasons that Mr. DiMase just described, I think that expert  
6 would also be appropriate. On any number of occasions, I've  
7 had people smarter than me try to explain to me what blockchain  
8 is and what cryptocurrency is and have not met with much  
9 success in my understanding. I hope to do so during this  
10 trial. So I do believe that the expert you propose appears to  
11 be qualified to do that. The timing issues concerning  
12 disclosure notwithstanding, I will grant defense the ability to  
13 use that expert, over the government's objection.

14 Now, with respect to the other expert, however, am I  
15 to understand that you still have not identified someone who  
16 would be able to testify in connection with the legal ethics?

17 MR. DEVLIN-BROWN: We have identified a likely  
18 candidate, your Honor. The individual doesn't wish that we  
19 name him unless we have some indication as to whether this  
20 would be permitted or not. And, frankly, Mr. Scott has  
21 financial considerations, so we don't want to hire someone  
22 without knowing whether testimony along these lines would be  
23 accepted or not.

24 Our reasoning for it, if I could just briefly explain  
25 that, is that, as we understand it, a lot of the government's

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1 argument and evidence will be that, although Mr. Scott revealed  
2 certain things about investors in the Fenero Funds, including  
3 the companies that directly invested with him, he did not share  
4 details about his awareness of the ties to those companies and  
5 Ruja Ignatova, who ran OneCoin. And I think the evidence will  
6 be clear that Ruja Ignatova and companies associated with her  
7 were legal clients of Mr. Scott both at Locke Lord and after he  
8 left Locke Lord.

9 THE COURT: But, as I understand it -- and correct me  
10 if I am wrong -- the omissions allegedly made by Mr. Scott were  
11 precisely in connection with the requirement that banks and  
12 other financial institutions do due diligence to establish  
13 those connections, because that's what determines whether or  
14 not something is going to be determined to be legitimate or  
15 poses a huge red flag. Are you suggesting that you're going to  
16 have someone come in here and say that, well, sure, these  
17 financial institutions have these legal obligations, but they  
18 have to take a back seat to a lawyer's obligation to keep  
19 certain information about their clients secret? Is that what  
20 you propose?

21 MR. DEVLIN-BROWN: So an expert would not testify to  
22 that, of course, your Honor. An expert, though, would testify  
23 that while Mr. Scott, as an attorney, could not lie on behalf  
24 of a client, ever, if it's not a lie, he has a duty of loyalty  
25 to the client even when he's representing the client in a

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1 nonlegal transaction, provided it's a current client, under  
2 Rule 1.6 of the Rules of Professional Conduct, not to do  
3 anything that's adverse to that client's interests, including  
4 causing embarrassment, causing unwanted attention. So that's  
5 what an expert would testify to, as to an obligation Mr. Scott  
6 had as an attorney, which wouldn't excuse any lies, or  
7 deliberate fault statements, or half truths, but it would  
8 explain his state of mind as to whether he was not going beyond  
9 that, because, as the government will argue, he knew that the  
10 money he was taking was criminal or not going beyond that  
11 because he had certain obligations as an attorney.

12 THE COURT: Okay.

13 MS. LOZANO: Initially, the government objects to this  
14 expert because there is absolutely no way for this Court to  
15 evaluate the propriety of this testimony because we have no  
16 name, we have no bases for the opinion, and we have no opinion.  
17 So we really -- there is nothing for the Court to evaluate in  
18 terms of what issue at trial this expert would provide  
19 testimony about. So the notice is deficient, and the  
20 government objects, initially, on that basis.

21 Secondly, the government objects because this  
22 testimony appears to suggest that somehow their withholding  
23 information that is required to be provided to financial  
24 institutions and fund administrators is somehow a legal  
25 defense. And there's no authority on that. There is no



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1 authority, and, in fact, the professional rules of  
2 responsibility that counsel cites specifically prohibit  
3 attorneys from hiding behind the duty in providing false  
4 information or lying. So they're not allowed to lie or provide  
5 false information. And, in fact, what is important here are  
6 the facts, which is why we need to know what this expert is  
7 going -- a proffer about what he or she is going to testify to.  
8 Because what we have here is not simply Mr. Scott declining to  
9 provide further information and providing truthful information,  
10 in the first instance. In fact, what he is doing, and what the  
11 allegations are, and what the evidence will show is that he is  
12 intentionally misleading; he is providing information about  
13 entities that are shell companies and individuals that are  
14 nominees for companies that aren't actually the investors.  
15 This money was Ruja's money, it was OneCoin's money, and any  
16 statements by the defendant that the money belonged to Irina or  
17 that the money belonged to IMS are simply not true. And the  
18 professional rules of responsibility would not allow and permit  
19 an attorney to make such false statements.

20 So, given what counsel has said, it does not appear  
21 that this evidence is going to be directly relevant to any  
22 issue at trial, because we are talking about deliberately  
23 misleading and providing false information, not withholding  
24 confidential information that may embarrass a client. And for  
25 that reason, the testimony absolutely risks misleading the

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1 jury. And there is no basis in law or in fact for the Court to  
2 admit it because we don't actually know what the testimony is  
3 going to be.

4 THE COURT: Okay. The motion to admit the unknown  
5 testimony of the unknown expert is denied.

6 Just to be clear, Mr. Devlin-Brown, with respect to  
7 your cryptocurrency expert, I assume that, like the  
8 government's expert, he will be testifying generally as to what  
9 cryptocurrency is and will not be providing an opinion as to  
10 whether or not OneCoin, whatever it is, is an appropriate  
11 example of cryptocurrency, correct?

12 MR. DEVLIN-BROWN: That's absolutely right, your  
13 Honor.

14 THE COURT: Okay.

15 MS. LOZANO: Your Honor, if I may, the government  
16 would like to make a record of its objection specifically to  
17 that point and the notice that the defense gave, which includes  
18 a number 3, that describes the testimony as explaining the  
19 challenges in the relevant time period in identifying which  
20 cryptocurrencies are legitimate and which are not. That is  
21 precisely what experts should not be testifying to, because  
22 from that testimony, it risks the jury interpreting that  
23 testimony and concluding whether OneCoin was legitimate or not  
24 and whether the representations that it made were false or not.  
25 And that is invading the province of the jury.

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1 THE COURT: Okay.

2 MR. DEVLIN-BROWN: On the third point, just to give  
3 your Honor some greater clarity, it's not that the expert would  
4 sort of say, in a conclusory way, it's impossible to tell, you  
5 know, the good from the bad. What the expert would explain is  
6 how you had some -- I'm not an expert either, so you'll have to  
7 forgive me if the actual expert is more clear, but the expert  
8 would explain that you had some early cryptocurrencies, like  
9 Bitcoin, that took off, the whole concept became very popular,  
10 the regulations around the world took some time to catch up to  
11 that. So you had a period of time, which we may still be in,  
12 your Honor, where there was a proliferation of  
13 cryptocurrencies, and it was difficult for someone to determine  
14 whether they were good or not because there were very limited  
15 regulations in the space. That would really be the nature of  
16 it.

17 THE COURT: Okay. Very well.

18 Let's turn now to the motion in limine concerning  
19 Mr. Scott's possession of a loaded semiautomatic handgun at the  
20 time of his arrest. I will give the government an opportunity  
21 to make its record, but that evidence is not coming in. Given  
22 that the nature of this case, as I understand it, that evidence  
23 inserts a level of violence and thuggery that I believe is not  
24 appropriate on the facts of this case, but I will let whoever  
25 one of you wants to make a record make a record.

JASKCOC

1 MR. FOLLY: Your Honor, we'll rest on what was in our  
2 submission.

3 THE COURT: Very well.

4 Next: The government's motion concerning that the  
5 defendant shall be precluded from offering any evidence for the  
6 purpose of establishing its state of mind absent proof that he  
7 was aware of such evidence during the relevant time period, is  
8 there specific information that the parties are aware of that  
9 someone is going to try to put in?

10 MR. DiMASE: Your Honor, first of all, I think the  
11 parties largely agree on this point. I think that the defense  
12 concedes, on page 13 of their response, that the government's  
13 legally correct that evidence that the defendant was not aware  
14 of cannot be introduced to show a state of mind. So I don't  
15 know that there's a particular dispute to be resolved here.

16 THE COURT: There's the flip side of that dispute,  
17 which is --

18 MR. DiMASE: Yes. And that, we are prepared to talk  
19 about.

20 THE COURT: Okay.

21 MR. DiMASE: But just as far as some potential areas  
22 where this first issue may arise, one is obviously audit  
23 reports or legal opinions that somebody has access to, but that  
24 Mr. Scott never saw, that would be one example.

25 THE COURT: Okay.

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1 MR. DiMASE: We asked counsel to provide us with any  
2 such records they intended to rely on at trial, and we were  
3 told in response that they were not prepared to give those  
4 materials to us at the time we asked. Their exhibits are due  
5 today, so to the extent that there are any there that raise  
6 concerns, we can obviously bring those to the Court's  
7 attention.

8 Another area is this generic concept that merely  
9 because some third-party business conducts business with  
10 OneCoin after doing some form of diligence on OneCoin, that  
11 that somehow shows that Mr. Scott had a particular state of  
12 mind. And that is troubling because, as we note in our motion,  
13 third parties can do whatever level of due diligence they want,  
14 and it's a subjective determination whether, after doing that  
15 diligence and learning whatever they learn, that they want to  
16 continue engaging in business. Unless Mr. Scott is part of  
17 that due diligence process and is learning the same facts, and  
18 he can show that, it doesn't seem to us that what some third  
19 party decides to do in terms of business of OneCoin is relevant  
20 to his state of mind. So that's another area where we have  
21 raised some level of concern that this issue may sprout up.

22 THE COURT: Okay.

23 MR. DiMASE: The second piece category that we  
24 discussed here on the flip side was that it's not offered for  
25 its truth, but is offered to show the defendant's state of

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1 mind. I don't think there's a dispute on this either, but to  
2 give the Court an example: Some service provider writes  
3 Mr. Scott and says, we are not satisfied with your due  
4 diligence responses to our questions, or you failed to provide  
5 us these documents, or we have concerns about your funds, and  
6 we're terminating business with you going forward, and the  
7 government's position is, those communications with Mr. Scott  
8 are offered for the purpose of showing his state of mind, that  
9 he understood that other parties around the world who were  
10 directly interacting with him terminated their business with  
11 him because of red flag concerns about the funds, failure to  
12 provide due diligence, responses, things of that nature. I  
13 don't think there's any real dispute on that issue based on  
14 what the defense wrote in its brief.

15 The third issue, I think, centers around a motion made  
16 by the defense regarding the testimony of Mr. Hatley, and  
17 Mr. Folly is prepared to address that issue.

18 THE COURT: This is the gentleman who said that he had  
19 done some research on OneCoin and decided not to invest?

20 MR. DiMASE: Right. There's one particular attempted  
21 victim, we'll call the person, who we would plan to call, and  
22 Mr. Folly is prepared to address that.

23 THE COURT: Okay.

24 MR. FOLLY: Your Honor, that's correct, your  
25 characterization of who that witness is. And the main argument

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1 and the main reason that that witness' testimony is admissible  
2 at trial is it's direct evidence of the fraud scheme. It shows  
3 the fraud scheme in action.

4 This particular victim was -- or attempted victim was  
5 recruited to join the fraud scheme by someone who had recruited  
6 numerous other individuals to invest in OneCoin. This was in  
7 the fall of 2015, the same time period the defendant joined the  
8 conspiracies. And this witness, after doing his own research,  
9 ultimately decided not to invest in OneCoin.

10 At trial, we intend to introduce a very limited set of  
11 witness testimony. At present, we're intending to introduce  
12 the testimony of three victims/attempted victims of the OneCoin  
13 fraud scheme. This testimony is limited in nature. And the  
14 purpose of it is to establish and show the OneCoin fraud scheme  
15 in action.

16 THE COURT: What does that gentleman do?

17 MR. FOLLY: I'm sorry?

18 THE COURT: The gentleman, the attempted victim, as  
19 you're describing, what does he do?

20 MR. FOLLY: His profession?

21 THE COURT: Yes. Because here is my concern: My  
22 concern is you're saying, well, this is just part of the  
23 scheme, but what I think the argument will be, or what I think  
24 the jury will take from that, is that if this guy, whoever he  
25 is, conducts ten or fifteen minutes' worth of research and is

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1 able to see right through this, then certainly Mr. Scott, who  
2 was a sophisticated international transactional lawyer, should  
3 certainly have known at least as much as that guy, right?  
4 Isn't that what this is about?

5 MR. FOLLY: Your Honor, that's not what this is about.  
6 It's about having an additional victim explain how the fraud  
7 scheme worked in action. As I mentioned, there's only going to  
8 be three such witnesses at trial. We're not putting on ten  
9 witnesses here to show how this fraud scheme worked in action.

10 Any concern on that front, I think, could be  
11 appropriately solved through a limiting instruction to the jury  
12 which says that this particular witness' conclusion about  
13 OneCoin is not to be considered by you as to what the defendant  
14 on trial knew or did not know about OneCoin's fraudulent  
15 nature.

16 THE COURT: Mr. Devlin-Brown or Mr. Garvin?

17 MR. GARVIN: Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 MR. GARVIN: Your Honor, I think the Court has zeroed  
20 in on the concern of the defense, and, that is that Mr. Hatley  
21 purports that he spent as little as 30 minutes and was able to  
22 determine that OneCoin was a scheme to defraud, and that the  
23 implication from that is that Mr. Scott must have known it was  
24 a fraud because Mr. Hatley was able to figure it out in what he  
25 described as 30 minutes of research.



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1           Your Honor, the prejudicial effect of that is  
2           staggering, and I think the Court recognizes that. There  
3           should be evidence as to what Mr. Scott did in this case, not  
4           what a complete stranger did in this case.

5           I would also note that in the fall of 2015, when  
6           Mr. Hatley is doing the things that he's doing and deciding  
7           whether or not to join OneCoin, Mr. Scott has not even met Ruja  
8           Ignatova at that point, and could not have possibly been a part  
9           of any conspiracy at that point.

10          Your Honor, as the government has just said, that they  
11          have many other witnesses in this same area, including at least  
12          two, if not three, other alleged victims. What Mr. Hatley  
13          brings to the table, other than what the Court has questioned,  
14          is duplicitous, at best. We would respectfully suggest that  
15          Mr. Hatley not be permitted to say that in a matter of 30  
16          minutes of research, he was able to determine that OneCoin was  
17          a fraud.

18          Now, if the government is true to their representation  
19          that that is not their purpose, if they want to put Mr. Hatley  
20          on to say he was approached, of course, we would have no  
21          objection to that, but that's not what this is really about.  
22          This is really about the fact that he's -- at the end of the  
23          day, he's going to say that if he could have found in such a  
24          short period of time that it was a scheme to defraud, then  
25          Mr. Scott should have.

JASKCOC

1           So, for those reasons, we would ask the Court to deny  
2           Mr. Hatley or prevent Mr. Hatley from doing that.

3           THE COURT: Okay. Yes, I'm going to -- Mr. Folly?

4           MR. FOLLY: Yes, just very, very briefly, just three  
5           quick points in response.

6           One is we have an obligation to meet the elements of  
7           the crime in this case. This is direct evidence on one of  
8           those elements. Mr. Garvin, maybe he's a little off on the  
9           timing. Scott was recruited into this conspiracy in September  
10          of the same year that this witness' testimony took place.

11          But the last point, your Honor, is that there will be  
12          direct evidence at this trial that the defendant was in  
13          possession of information that was very similar to this same  
14          witness. So it's not a situation in which, absent this  
15          witness' testimony, the jury is not going to be presented with  
16          that type of evidence in this case. So we believe this is  
17          direct evidence. There's nothing particularly prejudicial  
18          about it, other than that it helps show that this was a fraud  
19          scheme, and that on that basis, it should be allowed at trial.

20          THE COURT: I'm going to keep it out on all three  
21          grounds. I think it's cumulative. Look, if you want to put on  
22          another actual victim or another two actual victims, go ahead  
23          and do that, but I think, on 403 grounds, this comes very close  
24          to putting information before the jury that is likely to  
25          mislead the jury or cause confusion as to what the government

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1 needs to prove or what the evidence is.

2 Again, I'm not going to prevent you from putting on  
3 actual victims, or some reasonable number, but this is just too  
4 close for comfort for me in my discretion, and I will keep it  
5 out under 403.

6 Next. I think we've taken care of the government's  
7 motions, correct?

8 MR. DiMASE: Yes. The only remaining motion the  
9 government made was regarding 3505, which I think is not ripe  
10 for any Court intervention at this stage, and then several  
11 arguments about certain personal information regarding the  
12 defendant and evidence regarding the defendant that should not  
13 be admitted, which I don't think are controversial or opposed  
14 by the defense. So you're right, your Honor, that there are  
15 several additional issues raised by the defendant.

16 THE COURT: So let's first get to those. The first  
17 one is, I think -- and these are a little easier -- as to  
18 whether the government will be allowed to refer to victims as  
19 victims. So let's deal with that.

20 Mr. Devlin-Brown, why shouldn't the government be  
21 allowed to call a victim a victim?

22 MR. DEVLIN-BROWN: Well, your Honor, the government  
23 does point to a number of cases where that's been permitted,  
24 but I think the big difference here -- and I haven't had an  
25 opportunity to check all of the government's cases, but the big

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1 difference here is that Mr. Scott is not accused of any crime  
2 in which these people could be victims. They're victims, if  
3 they're victims, of a wire fraud scheme of which Mr. Scott is  
4 not accused of, and that sort of motivates a bunch of our  
5 motions, your Honor. I think there's a real risk of danger  
6 that a jury is going to -- it's a natural point of feeling for  
7 victims who lost their money.

8 THE COURT: But isn't an element of the money  
9 laundering offense, the money laundering conspiracy, that there  
10 be some underlying enumerated felony?

11 MR. DEVLIN-BROWN: Yeah. The government certainly has  
12 to prove that there was a wire fraud, and that's why we  
13 understand they're going to put on witnesses who say they saw  
14 these materials and they invested. They're going to put on  
15 other evidence that the representations were false. They have  
16 to prove that.

17 With respect to Mr. Scott and the money laundering  
18 scheme, as your Honor probably knows, the state of mind for  
19 someone accused of money laundering isn't that they  
20 participated in the actual scheme or knew exactly what it was,  
21 or a wire fraud; they just have to know that the money is  
22 criminal in origin. So since he has not been charged with the  
23 wire fraud scheme, there's just a danger in the jury hearing  
24 victims and thinking they could be victims of Mr. Scott's.  
25 And, legally, they're not victims of Mr. Scott's. There's no

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1 conceivable way in which they could be. Money laundering for  
2 restitution, for other purposes, does not have victims, at  
3 least not victims of an underlying crime, as far as I know.  
4 The only victims conceivably, I guess, could be for the bank  
5 fraud count. Banks, under some theories of bank fraud, that  
6 were insured by the FDIC could be victims.

7 That's what our motive really is in asking for them  
8 just to be described -- I don't see why it's necessary to  
9 describe them as victims, essentially.

10 THE COURT: Someone want to respond?

11 MS. LOZANO: Yes, your Honor, just briefly.

12 As the Court rightly pointed out, one of the elements  
13 that the government is going to have to prove is that the money  
14 laundering conspiracy involved moving proceeds of the  
15 underlying crime. And, in this case, it's the OneCoin wire  
16 fraud scheme.

17 And the term "victim" is a neutral, nonpejorative way  
18 to accurately describe a collection of people, some of whom  
19 will testify here, some of whom will not, and it does not risk  
20 prejudicing the defendant. The case law is clear. The term  
21 "victim" has been used in myriad circumstances, and it is  
22 neutral and appropriate, and the government believes it's  
23 entirely appropriate to call them victims. That's what they  
24 are; they're victims of the OneCoin scheme.

25 THE COURT: Very well.

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1           The government will not be precluded from referring to  
2       them as victims.

3           Mr. Devlin-Brown, if you have some language that you  
4       want me to charge the jury with, or you guys come up with  
5       language on consent, I'm happy to consider it, but as it  
6       stands, they can refer to the victims of the wire fraud scheme  
7       as victims before the jury.

8           I believe we've covered the testimony from OneCoin  
9       victims, including their purported investment and testimony  
10      from the attempted victim. So the next one is the defendant's  
11      use of OneCoin proceeds.

12          MR. DiMASE: Your Honor, I think there is a related  
13      point, actually, regarding the testimony of the victims --

14          THE COURT: Okay.

15          MR. DiMASE: -- itself; in other words, the fact  
16      that -- the story that they will tell about investing in  
17      OneCoin. Perhaps Mr. Devlin-Brown should address this issue  
18      first, since he made the motion, but it's regarding the scope  
19      of their testimony.

20          THE COURT: Okay.

21          Mr. Devlin-Brown?

22          MR. DEVLIN-BROWN: Yes, certainly, your Honor, and I  
23      can be brief. This is in our motion, at pages 3 to 4.

24          The concern, again, that Mr. Scott not being charged  
25      with the wire fraud scheme, the Court needs to carefully

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1 monitor and impose limits, where appropriate, where the  
2 evidence could be unduly prejudicial, particularly as he's not  
3 charged with wire fraud. And one concern we have about victim  
4 testimony is a couple of things that are really completely  
5 irrelevant to whether there was a wire fraud and really only  
6 relevant to sympathy for the victims, and that is, number one,  
7 how much the person invested, if they invested their life  
8 savings versus if they invested \$5,000, but had plenty more  
9 where that came from, that's not relevant to it, and the same  
10 degree -- the hardship these individuals suffered by not  
11 getting a return on their investment, that has no relevance to  
12 wire fraud, whether it was no big deal to them, whether they've  
13 now had to move out of their homes.

14 And while we understand, again, for a defendant  
15 charged with wire fraud, the Court should provide more leeway  
16 to prosecutors in that regard. The line of what's relevant  
17 versus what's unduly prejudicial, I think, permits a fair  
18 amount more. When you have someone who is not charged with  
19 that as participating in the underlying wire fraud scheme,  
20 things like that that don't really add to the relevance, have  
21 the capacity to really cause unfair prejudice.

22 THE COURT: Okay.

23 MR. DiMASE: Your Honor, very briefly, I think we laid  
24 out our arguments as well, but as far as the proof required at  
25 this trial, again, the government's required to prove the wire

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1 fraud scheme. I think this idea of OneCoin versus a generic  
2 knowledge of criminality is a distinction without a difference  
3 in this case. It's really about the defendant's knowledge of  
4 OneCoin itself, that's what the trial is going to focus on, not  
5 whether the defendant was aware of some vague criminal  
6 enterprise that was funding his Fenero Funds.

7 But more to the point, we do not anticipate there is  
8 going to be testimony of the sort that a victim lost their  
9 entire life savings and attempted to commit suicide or anything  
10 of that nature. The evidence that we expect to come in through  
11 these witnesses is information regarding how they were  
12 approached to invest, the amounts they invested, as reflected  
13 in certain cases, wire receipts showing where they sent the  
14 money, very basic evidence that ties directly to the scheme.  
15 And as the government noted, some of the money at least one of  
16 these victims sent was sent directly to a company,  
17 International Marketing Services, which then funded the  
18 defendant's money laundering -- or, sorry, the defendant's  
19 purported investment funds, which were used to launder money.  
20 So it is a very direct connection between these victims'  
21 investments and ultimately the funds that Mr. Scott was  
22 running.

23 And we also expect some level of testimony regarding  
24 the financial harm that was caused to them as a result of  
25 losing the money they invested in OneCoin. That is part of the



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1 narrative of their testimony.

2 As I said, we don't expect this to go off into an area  
3 of calamitous events that these investments caused in these  
4 victims' lives. So I think there is no danger of unfair  
5 prejudice, it's part of the narrative of the case, and it  
6 should be admitted, your Honor.

7 THE COURT: I will allow that testimony to come in,  
8 again, subject to any appropriate objection at trial.

9 Finally, I think the defendant's use of the OneCoin  
10 proceeds?

11 MR. DEVLIN-BROWN: Yes, your Honor.

12 THE COURT: Mr. Devlin-Brown?

13 MR. DEVLIN-BROWN: So we raised this again in our  
14 papers and don't need to belabor the point, but there are a  
15 number of courts that have made, I think, the excellent  
16 observation that whether a defendant, facing a financial  
17 profit, goes and spends his money on a Porsche, or goes and  
18 spends his money on investments into a 401(k), or whatever is  
19 not probative of whether he got those monies from a crime.  
20 Mr. Scott, in this case, opened up a private equity fund. He  
21 took in a lot of money into that fund, made substantial profits  
22 himself from that fund. The key issue at trial is whether or  
23 not Mr. Scott knew that money coming into that fund was from  
24 some crime. And how he spent his money, that he bought cars,  
25 just isn't probative of that. He bought cars before the

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1 alleged scheme ever occurred.

2 And after this motion --

3 THE COURT: Did he buy quarter million dollar cars?

4 MR. DEVLIN-BROWN: No, he didn't buy as expensive  
5 cars. But, again, your Honor, he's presumed innocent. He made  
6 a lot of money from this private equity fund, there were fee  
7 agreements in place. It doesn't prove it's legitimate or not  
8 on what he did with his windfall.

9 And the government has shown some of their exhibits  
10 now. They produced exhibits last Monday. There are exhibits  
11 with Mr. Scott by a yacht, and there are exhibits, photos, of  
12 nice cars. What does that have to do with the issues at trial?  
13 And it really does raise, when you sort of add all of that  
14 detail, the chance that some jurors may assume, if he's  
15 spending money like that, he's got to be a criminal. So it  
16 just is not probative.

17 I would like to address one point in the opposition  
18 that the government filed. And they've made a suggestion that,  
19 well, actually, a lot of this is very relevant because it's  
20 money laundering, in and of itself, perhaps the way he bought  
21 these things and the way he hid them. We haven't heard that  
22 before this opposition, that that was the money laundering, how  
23 he bought things, but it really doesn't add up. And without  
24 getting too bogged down in detail, your Honor, the Fenero  
25 Funds, Mr. Scott listed himself as the universal beneficial

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1 owner. He filed taxes on that, he reported that to the IRS.  
2 Those funds are managed by companies he's had, which are  
3 registered in his name. MSSSI, your Honor probably remembers  
4 that from the subpoenas. And that when the government talks  
5 about the various transfers of monies from the Fenero Funds to  
6 his purchases, what the transfers are is from the funds,  
7 Fenero, to MSSSI, again to him in his name, to his attorney, in  
8 some cases, for escrow, which is not unusual, he's had this  
9 personal attorney for a long time, to buy expensive things. So  
10 I don't want there to be a suggestion that that, too, needs to  
11 come in to prove an effort to cover up the source of the funds.

12 MR. FOLLY: Your Honor, we set forth in our brief  
13 three distinct reasons why this evidence is admissible at  
14 trial. And I will touch on all three of them here.

15 One, it is direct evidence of these charged  
16 conspiracies to commit money laundering. It's further evidence  
17 of money laundering. The actual ways that he was moving this  
18 money are, in fact, very similar to what he was doing  
19 throughout the conspiracy.

20 The second is that it's necessary to show he actually  
21 controlled these particular funds and that these funds were  
22 indeed his cut for participating in this money laundering  
23 conspiracy. Absent our ability to show that he has funded  
24 purchases for himself, it would give the jury a very misleading  
25 view about how much money he actually earned through these

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1 funds, which is particularly important because he did not earn  
2 a dime for his, quote-unquote, investors, and yet got paid  
3 outsized fees that were well beyond what anyone would get paid  
4 for managing private equity funds that actually earned money  
5 for their investors, which, here, there was no evidence of.

6 And then, lastly, it's directly relevant on  
7 consciousness of guilt as well as motive. So I want to just go  
8 through those very, very quickly.

9 We set forth some examples in our brief of the  
10 particular ways that he was routing the money to make these  
11 purchases. And consistent with all the other evidence in this  
12 case, it's clear he was deliberately attempting to conceal the  
13 actual source of the money. There's instances where the money  
14 goes directly from the purported investment funds to his lawyer  
15 and then directly to fund the purchase of, for example, houses  
16 and vehicles. That's different than what was just described by  
17 Mr. Devlin-Brown, describing money going from Fenero back to  
18 Mr. Scott's own company, and then on to a lawyer, and then on  
19 to make some of these purchases. And that happened as well.

20 So as set forth on page 10 of our brief, there's  
21 numerous ways that he moved the money in a pattern that looked  
22 deliberately designed to conceal the origin of the funds  
23 consistent with what he did throughout the money laundering  
24 conspiracy.

25 The second point is just that -- and it's very

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1 simple -- without being able to show that these funds actually  
2 funded purchases for Mr. Scott, the jury would be left with a  
3 very -- with a total misimpression about how much money Scott  
4 actually earned through his participation in this conspiracy,  
5 which is important because the government's theory of the case  
6 is he got paid an outsized fee because he was engaging in  
7 criminal conduct. If we can't show that he actually controlled  
8 this money, then we can't present to the jury just how outsized  
9 that fee actually was.

10 And then the last reason is motive and, also,  
11 consciousness of guilt. I'll go in reverse order, with  
12 consciousness of guilt. Again, the way he moves these funds,  
13 evidence that he is deliberately trying to hide where they come  
14 from, and that demonstrates his consciousness of guilt that  
15 these are criminal proceeds.

16 And then on motive, the defense actually kind of  
17 glosses over this, but, in this case, motive is particularly  
18 important. This is a lawyer who, at the time he joined the  
19 conspiracy, was a partner at a prominent law firm here in the  
20 United States. The jury will rightly ask themselves, why would  
21 he risk his entire livelihood, everything he had worked  
22 throughout his career for, to join this very, very significant  
23 conspiracy, and one of the answers to that is that it enabled  
24 him to buy these things which he clearly wanted, and the  
25 evidence of what he purchased with the fraud scheme proceeds

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1 will allow the jury to understand that.

2 So those are three separate grounds, each of which  
3 independently show that this evidence is admissible at trial.

4 THE COURT: Anything further, Mr. Devlin-Brown?

5 MR. DEVLIN-BROWN: Just very briefly, very briefly,  
6 your Honor.

7 On the point of this is the only way to show the  
8 amount of money he made, except for his tax returns, he paid  
9 4-1/2 million in taxes in 2016, these monies, again, were all  
10 in his name through his companies, nothing was hidden. So it's  
11 not necessary for that purpose.

12 The only other thing I'd ask your Honor is if you're  
13 inclined to permit some proof of this, there's a big difference  
14 between having a financial analyst, which they will be calling,  
15 testify to money going to particular places, and this is a car,  
16 this is a house, and having start of gratuitous photos of  
17 expensive Hermès bags and other things which the government has  
18 shown in its exhibits that doesn't really add anything other  
19 than to sort of inflame the jury. So if any of this comes in,  
20 I think there should be some limits on it.

21 THE COURT: Well, I don't know what all the government  
22 is intending to offer, but I think it is appropriate that they  
23 be allowed to offer evidence of the way in which the amount of  
24 money that Mr. Scott received and the way in which he used it.  
25 By the way, this is garden-variety testimony and evidence in

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1 white collar trials, as I'm sure all the parties are well  
2 aware, and the Second Circuit has, on any number of occasions,  
3 indicated that it is appropriate in these types of cases to  
4 show how it was that the defendants put their money to use.  
5 And I do agree with the government that this is direct evidence  
6 of the offense that is charged. It shows the proceeds of those  
7 offenses. I also credit their argument that the jury, if not  
8 told what all Mr. Scott did with at least some of this money,  
9 they would be left with a question of why someone with his  
10 solid career and solid reputation, I assume, would ensnare  
11 themselves with an international criminal conspiracy.

12 So, again, we'll see at trial whether the government  
13 tries to put too much of this type of evidence in, but they  
14 certainly are allowed to put some of it in.

15 And I think that takes care of all the motions in  
16 limine, correct?

17 MR. DiMASE: Yes, your Honor.

18 THE COURT: Okay.

19 So why don't we talk about, first of all, the MCC  
20 subpoena, and then the statements from his postarrest statement  
21 that the defense wants to put in.

22 MR. DiMASE: Yes, your Honor.

23 We can start with the MCC subpoena, as you suggested.  
24 Your Honor, the defendant is essentially attempting to go on a  
25 fishing expedition to find a bunch of what he believes to be

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1 impeachment material in a voluminous amount of cooperator phone  
2 calls and emails. And the case law is very clear that the  
3 Nixon standard for trial subpoenas under 17(c) applies to both  
4 pretrial and to trial subpoenas, and that there has to be some  
5 degree of specificity, which is entirely lacking in the motion  
6 that has been made by the defense in this case. And there are  
7 a number of cases in this district where district courts have  
8 denied similar or quashed similar subpoenas for phone calls and  
9 for emails when they were not narrowly tailored in some way.

10 The only limitation that the defendant has proposed to  
11 place on his subpoena rider since first issuing the subpoena is  
12 to limit the time frame to July rather than to March, but he in  
13 no other way limits the scope of the subpoena or specifies in  
14 particular what communications he is looking for among a vast  
15 trove of what are very likely to be private and personal  
16 communications with friends and family.

17 I did hand up, prior to today's proceeding, a copy of  
18 the Percoco decision from Judge Caproni in 2018, in which Judge  
19 Caproni lays out the standard that is applicable to these  
20 subpoenas, confirming that the Nixon standard does apply to  
21 Rule 17 trial subpoenas and also denying a similar request made  
22 by the defense in that case for cooperator phone calls, emails,  
23 and other similar records without any level of specificity in  
24 what was being requested.

25 The defendant has tried to draw the distinction



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1 between pretrial and trial subpoenas, your Honor, but there are  
2 a number of cases cited by the government, including the  
3 Percoco case, that do address this issue in the context of  
4 trial subpoenas. And the bottom line is they do not allow this  
5 exact sort of fishing expedition for potential impeachment  
6 evidence.

7 THE COURT: Thank you.

8 Mr. Devlin-Brown?

9 MR. DEVLIN-BROWN: Thank you, your Honor.

10 This is not a fishing expedition. The government, as  
11 we set out, had, while their cooperating witness was not as  
12 cooperative, obtained these materials. His emails, in  
13 particular; I don't know if they obtained his calls. They  
14 provided them to the defense. They then, after he began  
15 proffering and ultimately pled to a cooperation agreement,  
16 appeared to have stopped seeking that material. We filed, in  
17 our response today, an ex parte attachment, which we will defer  
18 to the Court, but we believe is appropriate because I think it  
19 gives away defense strategies, but there is material in what  
20 was produced that does suggest that if those sorts of  
21 statements were repeated -- and there's no reason to assume  
22 suddenly they would not be -- that that would be very powerful  
23 impeachment evidence against the cooperating witness.

24 THE COURT: I'm sorry, did I understand you to say  
25 that you submitted something today ex parte?

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1 MR. DEVLIN-BROWN: Yes. We filed something this  
2 morning. First sent it to the Court, copying the government,  
3 the submission without the attachment, and then moments later,  
4 sent, just to the Court, the submission with the ex parte  
5 attachment. I'm happy to provide a copy.

6 THE COURT: I haven't seen it.

7 MR. DEVLIN-BROWN: Okay.

8 You did see our submission, though, I gather?

9 THE COURT: I believe I did, but if something came in  
10 today, I haven't seen it.

11 MR. DEVLIN-BROWN: Oh, it's this morning, yeah. Do we  
12 have that extra?

13 So this is the submission. There's a blue sheet  
14 behind it with the ex parte submission.

15 THE COURT: Yes, I haven't seen this. And I am not  
16 going to read the entire thing now. So, based on what is  
17 before me, the subpoena, certainly as submitted or as  
18 represented in the government's letter of October 24, is  
19 quashed. That is without prejudice for me to consider these  
20 additional materials further, and if I change my mind, I will  
21 let the parties know.

22 Okay?

23 MR. DEVLIN-BROWN: Thank you, your Honor.

24 THE COURT: And quashed, by the way, for the reasons  
25 set forth in the government's letter concerning the Nixon

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1 standard and Judge Caproni's decision in Percoco, in which she  
2 notes, amongst other things, as Judge Nathan explained in Pena,  
3 another case, courts in this district routinely quash subpoenas  
4 for "all records of detained cooperators," and citing Pena 2016  
5 WL 8735699, at \*3, and the subpoena that I saw was of that ilk,  
6 and, accordingly, it is quashed pending further notice of the  
7 Court.

8 Next, the statements that the defense wishes to put in  
9 in addition -- the postarrest statements that the defense  
10 wishes to put in. So, who will speak first?

11 MR. DiMASE: Your Honor, it may make sense for defense  
12 to speak first. We have obviously noted in our submission the  
13 portions of the statement that we intend to introduce, and  
14 they're clearly party admissions that are admissible under the  
15 rules of evidence.

16 THE COURT: Okay.

17 Mr. Devlin-Brown?

18 MR. DEVLIN-BROWN: Your Honor, this may require going  
19 through it step by step --

20 THE COURT: Sure.

21 MR. DEVLIN-BROWN: -- but our general position is  
22 that, as you've heard even today, the government has repeatedly  
23 alleged that Mr. Scott lied in the postarrest statement, that  
24 he lied about his relationship with Ruja Ignatova and her  
25 connection to the funds, but what the government has done

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1 through its selections has put in some of Mr. Scott's answers  
2 to questions about dealings with Ruja Ignatova, some of his  
3 answers to questions about what he knew about OneCoin, but  
4 omitted others. And perhaps the most egregious example is  
5 where they omit something -- he says three sentences: One is  
6 to the effect of, yes, he had heard about OneCoin beyond the  
7 press; the second sentence is that's why he got a legal opinion  
8 about it; and then the third sentence is there were rumors it  
9 was a Ponzi Scheme.

10 So, the way the government has pieced these things  
11 together, it presents a very misleading picture of what the  
12 defendant actually said. And we propose eight additions. We  
13 can go -- whatever your Honor pleases, we can go through them  
14 one by one, argue them one by one.

15 THE COURT: We can go through them one by one quickly.

16 MR. DEVLIN-BROWN: Okay.

17 So, the first proposed addition --

18 THE COURT: By the way, can I ask a question?

19 MR. DEVLIN-BROWN: Of course.

20 THE COURT: Is there a difference between the document  
21 filed at 164, which is your letter of October 27, and document  
22 165, which I think is an identical letter?

23 MR. DEVLIN-BROWN: We got an error notice from ECF,  
24 although I don't remember if it was related to that.

25 THE COURT: Okay.

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1 MR. DEVLIN-BROWN: What you should have, your Honor,  
2 is a letter that says on the front page: "Opposition to the  
3 government's motion to preclude the defense from offering  
4 additional portion of Mr. Scott's postarrest statements."

5 THE COURT: Yes.

6 MR. DEVLIN-BROWN: Okay.

7 And accompanying that is a transcript of the  
8 postarrest statements with what the government wants to include  
9 in yellow and proposed additions from the defense in green.  
10 Each one of these points, I think, stands alone, but, really,  
11 it's sort of in the totality where the prejudice to the  
12 defendant is most clear.

13 So, the first addition, your Honor, is on page 7 --  
14 sorry, it's on page 10, starting at 7:39 and running through  
15 7:40:37.

16 THE COURT: Yes.

17 MR. DEVLIN-BROWN: So, if you can see, in the answer  
18 right before, Mr. Scott explains that Irina was introduced to  
19 him by Ruja, very famous because she does the crypto stuff now,  
20 Ruja and she, and the agent then asks, is it -- that's her  
21 first name, and then he goes on to explain Ruja and what he  
22 knows about Ruja and the nature of that introduction, including  
23 stating, quite openly, that he knew that she was connected with  
24 OneCoin. So we think that statement needs to come in for that  
25 purpose of allowing a complete discussion there of what he knew

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1 about Ruja.

2           There's another aspect of this statement, your Honor,  
3 where he talks about the role Akbor played in looking at  
4 OneCoin. That should be admitted based on, in addition to  
5 this, because it's connected to Ruja, other portions that the  
6 government has offered where they choose to put in some of what  
7 Mr. Scott knew about and told the agents about OneCoin, but  
8 omitted other things.

9           THE COURT: Okay.

10           MR. DiMASE: Your Honor, just to start with the legal  
11 principle at play here, the question isn't whether it would be  
12 helpful to the defendant. That is simply not the question.  
13 The only question is whether it is necessary to understand  
14 fairly the admitted portion of the recording.

15           So if we look at what is being discussed here, the  
16 question is how much was received and who are the investors,  
17 and the last question is tell us about Irina. He answers that  
18 question, arguably. I mean, the government would not object to  
19 the next question and the first sentence of the following  
20 answer being admitted, if the defendant wishes to have that  
21 question admitted. The rest is a self-serving statement, not  
22 even an answer to the detective's or agent's question, you  
23 know, where Mr. Scott is offering up sua sponte justifications  
24 for his involvement with these people. It's not necessary to  
25 understand the admitted portion, and it should not be admitted,

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1 and it's inadmissible hearsay if offered by the defendant.

2 THE COURT: I agree.

3 And, Mr. Devlin-Brown, I'll give you the option. If  
4 you wish, I will include the following, which is the first part  
5 of what you recommend, that first named question by Agent  
6 Eckel, and then this part of the answer, Ruja is her first  
7 name, and she was involved in -- in some cryptocurrency. She  
8 had one of those Bitcoin or has one of those Bitcoin type  
9 deals. I'll leave it up to you. You don't have to tell me  
10 now.

11 MR. DEVLIN-BROWN: Yes, we'll take that, your Honor.

12 THE COURT: Okay. That will be included.

13 MR. DEVLIN-BROWN: Okay.

14 THE COURT: Next.

15 MR. DEVLIN-BROWN: So the second proposed addition is  
16 at 7:54:38, which you'll find on page --

17 THE COURT: 20.

18 MR. DEVLIN-BROWN: 20, exactly. I don't want to argue  
19 too much about the standard, because I think the Court fully  
20 understands the standard, but the Second Circuit actually  
21 issued a very helpful opinion this past July, cited in our  
22 brief, United States v. Williams, and it does make clear that  
23 the rule of completeness is broader than the Federal Rule of  
24 Evidence, and, ultimately, the touchstone here is making sure  
25 that there's not a misleading impression by anything the

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1 government chooses to present. So it's not really looking at  
2 this -- I know we're going through it excerpt by excerpt, your  
3 Honor, but really part of the argument is in the totality of  
4 circumstances where you don't want the government to be able to  
5 say in summation, you know, what did he tell the agents about  
6 Ruja? All he said was this. And then if anything, frankly, is  
7 omitted about Ruja, it would be misleading for the government  
8 to make that argument.

9 So moving on, excerpt 2. So, with this series of  
10 questions, they ask about Gilbert Armenta, who is an alleged  
11 coconspirator, and that's really the person who's at the center  
12 of most of the bank fraud-related charges that the government  
13 is pursuing. So there's an answer where he says -- sorry, the  
14 question is: Was Gilbert an investor in Fenero or in any of  
15 the other companies? And Mr. Scott says: Yes. And the agent  
16 then responds, in the part that's cut off: He was? And then  
17 Mr. Scott explains that it's not an unqualified yes; in fact,  
18 he returned his funds because there were red flags when that  
19 investment came in.

20 So, without that addition, it creates a misleading  
21 impression that, yeah, Gilbert was an investor full stop when,  
22 in fact, it's not really a full stop, and that's not all that  
23 Mr. Scott relayed in that answer.

24 THE COURT: Do you know when it was, or can someone  
25 tell me when it was, that the funds were returned?



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1 MR. DiMASE: Yes, your Honor, I can tell you. The  
2 funds -- 5 million went in in June of 2016, 5 million went in  
3 in September of 2016, and approximately 10 million was returned  
4 in approximately April of 2017. So this is many months later.

5 And it's -- I mean, the more important point, from our  
6 perspective, your Honor, is it's not necessary to understand  
7 the admitted portion. Is he an investor? Yes. I mean, that  
8 was the question. He's answered it. Whether he returned the  
9 funds at a later date and why, those are not -- those answers  
10 are not needed to understand the admitted portion or to place  
11 it into context.

12 THE COURT: And he invested \$10 million, and it was in  
13 at least six months, half a year?

14 MR. DiMASE: Yes, your Honor. I think the evidence at  
15 trial will show that it was returned in approximately April of  
16 2017.

17 THE COURT: Okay.

18 I'm not going to put in any further portion of that  
19 excerpt. So that application is denied.

20 Next?

21 MR. DEVLIN-BROWN: Okay. 3, 4, and 5, I think, can  
22 kind of be looked at in context, your Honor. I'd ask you to  
23 reserve ruling until you look at all three.

24 The gist of this -- and there are various places where  
25 the agents ask Mr. Scott questions about what he knows about

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1 OneCoin and its reputation, but then they choose only portions  
2 of his discussion about that in the course of the interview,  
3 where he says things like, I heard it was a Ponzi Scheme or I  
4 read that it might be a Ponzi Scheme, while omitting positive  
5 things he said he heard about OneCoin, and that, again, creates  
6 a misleading impression. So go through each of these quickly.  
7 Excerpt number 3 we propose is at 7:57:16 to 7:58:42, that's 21  
8 to 22. It's an entire discussion omitted by the government  
9 relating to how Mr. Scott knew Ruja Ignatova and omitting that  
10 she was not a client simply of Mr. Scott, but of Locke Lord,  
11 which included an expert in cryptocurrency.

12 I can go to the next one, your Honor, condition 4,  
13 which is at 8:18:21. This is really, frankly, the most glaring  
14 one. The government's got a long back-and-forth discussion  
15 about OneCoin, and the question is asked at 8:18:14: Okay, so  
16 you never heard of OneCoin besides reading about it in the  
17 press? And Mr. Scott, under the government's version, would  
18 say: No, I heard about OneCoin. You know, there was rumors  
19 that were going around, pyramid scheme and all that, and we  
20 didn't want to be involved in that. They're omitting a  
21 sentence which clarifies his reference to pyramid scheme,  
22 making clear that he had, from the beginning, when he knew the  
23 relationship between Ruja and OneCoin, wanted an opinion of  
24 which country or, if at all, any country where OneCoin was  
25 illegal, or, you know, banned or, whatever, so then we wouldn't

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1 do business with them. That relates directly back to that  
2 third excerpt, your Honor, that the government left out, where  
3 he's explaining that he had a partner, or a senior colleague at  
4 the firm, Peter Courtneidge, who did look into these issues,  
5 and that Mr. Scott says in that excerpt, excerpt 3, that he,  
6 quote, relied on that when he left the firm to see if this was  
7 anything he could do business with.

8 THE COURT: Just so I understand, did Ruja go to Locke  
9 Lord independently of Mr. Scott?

10 MR. DEVLIN-BROWN: Yes, your Honor. The evidence will  
11 be that Ruja Ignatova was introduced to Mr. Scott and another  
12 partner at the -- he may not be a partner, he may be like a  
13 senior counsel, Robert Courtneidge, by Gilbert Armenta.  
14 Mr. Courtneidge did analysis for her related data  
15 cryptocurrency work because he was a payments expert, and that  
16 gave Mr. Scott, frankly, some comfort. In fact, after that,  
17 the firm did a whole bunch of other work for Ruja Ignatova and  
18 OneCoin going beyond the introduction, even after Mr. Scott had  
19 left the firm.

20 So that's the 4, that's excerpt 4. And then excerpt  
21 5, which I think also should be seen in the same context,  
22 starts at 8:22:24. Did I get that --

23 THE COURT: 8:21:03?

24 MR. DEVLIN-BROWN: Yes. I must have made a mistake  
25 there.

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1           So, again, there's questioning leading up to that  
2 about -- where Mr. Scott says he stopped doing business with  
3 them -- or he's asked: So you stopped doing business with them  
4 since you found that they were processing for OneCoin? This is  
5 a company. He says: Yes. There's a question about what the  
6 company was. And then after the agents sort of give Mr. Scott,  
7 this is your one opportunity, which, frankly, we're neutral  
8 either way whether that stays in or out, but after that, that  
9 one opportunity, there's a, is there anything else you want to  
10 tell us about any of this, and he expands on the point he had  
11 just made above, which is why he was comfortable dealing with  
12 companies at the time and how his state of mind is different  
13 now. And he explains that he had gotten due diligence and puts  
14 that earlier answer in context. So those are 3, 4, and 5.

15           THE COURT: Mr. DiMase?

16           MR. DiMASE: Yes, your Honor. May I have one second  
17 just to check something?

18           THE COURT: Sure.

19           MR. DEVLIN-BROWN: Your Honor, I actually gave you 6  
20 instead of 5. Did I give you an extra 5?

21           THE COURT: You gave me three. I don't know  
22 whether -- what you --

23           MR. DEVLIN-BROWN: Yes. The last one, I made a  
24 mistake.

25           (Pause)

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1 MR. DEVLIN-BROWN: No, never mind. I stand corrected.

2 MR. DiMASE: Your Honor, I understand the defendant's  
3 argument as to the middle passage on 8:18:21, and I'd like to  
4 come back to that at the end.

5 THE COURT: Okay.

6 MR. DiMASE: That's the one that's sort of in the  
7 middle of an otherwise government-admitted passage.

8 The other two are -- I'm focusing on two for now -- on  
9 Page 21. The admitted portions are the same and don't even get  
10 into the representation of Ruja by Scott, and this passage is  
11 not necessary to understand any other admitted passage in the  
12 statement. So questions about representing her and the nature  
13 of the representation are just not necessary to understand  
14 other portions. Again, it's not a matter of whether this would  
15 be helpful to Mr. Scott, it's a matter of whether this would be  
16 necessary to understand this statement in context. And, of  
17 course, Mr. Scott reserves the right to testify himself at the  
18 trial and offer up his own explanation of all of these things.  
19 That's not the point of this statement and the exercise we're  
20 engaged in now.

21 The same can be said of the passage on 31 to 32. It's  
22 simply not relevant to understanding any of the admitted  
23 passages. It contains a bunch of self-serving and exculpatory  
24 statements made by Mr. Scott sua sponte in answer to very  
25 generalized questions that are not connected to the rest of the

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1 statements, so there's no basis for the admission of that  
2 statement under the rule of completeness.

3 One moment?

4 (Pause)

5 MR. DiMASE: If I understand correctly, it's those two  
6 statements, and the third one is 8:18:21 that we're currently  
7 discussing?

8 THE COURT: Correct.

9 MR. DiMASE: Okay.

10 Your Honor, with respect to that, our position is that  
11 that portion of the answer is not responsive to the question  
12 that was asked. It's another sua sponte self-serving statement  
13 being made by the defendant to justify his involvement. And  
14 the answer to the question is contained in the yellow  
15 highlighted portions in which he says, I heard about OneCoin,  
16 there were rumors going around, pyramid scheme and all that.  
17 The middle portion is simply a self-serving statement regarding  
18 why he chose to get involved with her, or whether he did get  
19 involved with her or not, and is not responsive to the question  
20 that was asked of him and not necessary to understand the  
21 answer.

22 So those are the government's positions on those three  
23 statements, your Honor.

24 THE COURT: I'm not going to require the government to  
25 put in those three statements when they play this testimony for

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1 the jury. Again, just because Mr. Scott happens to say  
2 something that is in conformity with his theory of the case or  
3 the theory of the case that he is going to present to the jury  
4 does not mean that it comes in under the rule. The rule  
5 requires that the portion that is being kept out render the  
6 statements that are being put before the jury either in a  
7 misleading way or in a way that does not allow the jury to  
8 understand what is being put in. And while I certainly get why  
9 the defense wants to put this in, it is not, strictly speaking,  
10 required under the rule, and so I will not require the  
11 government to put it in in their case.

12 Next?

13 MR. DEVLIN-BROWN: I will move on to the next, your  
14 Honor. And I know you've made your ruling, but I do want to  
15 just make a record, or even better, hopefully try to persuade  
16 you.

17 The part that's cut out from the middle of the  
18 sentence, that's going to result in being played for the jury  
19 an edited video, which is just not what Mr. Scott said. And  
20 the government seems to take the position that if he says  
21 something negative-ish about OneCoin, well, that's responsive,  
22 but if he should say something positive that he's heard, it's  
23 not. The question that he's answering is: Okay, so you never  
24 heard of OneCoin besides reading about it in the press?  
25 Implicit in that is: So what else do you know about OneCoin if

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1 you haven't heard about it beyond the press? And that's what  
2 he's answering. He's explaining, maybe not in the most  
3 coherent way possible, but that's what he's clearly saying, and  
4 it just creates -- especially when the next sentence is pyramid  
5 scheme, you snip those things together and get rid of the one  
6 statement that shows that Mr. Scott had some good-faith things  
7 that he heard about OneCoin, it's just deeply misleading.

8 THE COURT: I understand your argument.

9 MR. DEVLIN-BROWN: Okay.

10 6 is really encompassing part of 5, so we can skip  
11 that.

12 Defense addition 7 is at 8:26:46. This is essentially  
13 another situation where the government removes part of  
14 Mr. Scott's answer. Again, this is part of the concern, it's  
15 the same questions where parts of his answer are being removed.  
16 The question is: And OneCoin and Ruja had nothing do with  
17 Fenero or any funds you were involved in? He starts the  
18 answer, and then the rest of the answer is an explanation of  
19 why he was comfortable and what he understood the relationship  
20 of the funds to be. So I think, again, cutting that out is  
21 unfair.

22 THE COURT: Okay.

23 Mr. DiMase?

24 MR. DiMASE: Your Honor, again, the same argument  
25 here, that the first couple of sentences of that paragraph are



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1 the answer to the question. The rest is a self-serving,  
2 exculpatory statement offered up sua sponte by the defendant  
3 and is not necessary to understand the remainder of the  
4 statement that is being admitted.

5 THE COURT: I agree. So I'm not going to require the  
6 government to put that portion in its case in chief.

7 MR. DiMASE: By the way, your Honor, just so the  
8 record is clear, there's an overlapping green and yellow word  
9 there.

10 THE COURT: Where is that?

11 MR. DiMASE: On page 34, "anywhere" was to be included  
12 by the government. So we would propose ending it after the  
13 word "anywhere," even though it is also in green.

14 THE COURT: That's what I assumed.

15 And next?

16 MR. DEVLIN-BROWN: Okay. That brings us to the final  
17 one, your Honor, which is Defense Exhibit 8, and this really is  
18 cutting Mr. Scott off before he's able to answer the question.  
19 So you have to start on page 34, where Agent Eckel asks: What  
20 were your fees? And fees are going to be a big deal because  
21 the government essentially says he didn't deserve any fees and  
22 was just taking money out of the funds. So, Mr. Scott starts  
23 to answer, he says: We had evolving fees. We had some like in  
24 our subscription documents, which were normal, you know,  
25 like -- and then the agent cuts him off, and they have a little

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1 bit of a, you know, you keep saying we; who are we? The funds.  
2 Yeah, who else is there? You're the guy. There's a little bit  
3 of this rah-rah-rah, and then Mr. Scott, trying to end that,  
4 says: No, I'm the guy. No, yes, and then he answers in full  
5 the question he had been cut off answering about what his fee  
6 structure was.

7 At least a significant part of that, at least the  
8 first couple of sentences, I think, clearly are, even if the  
9 government has different arguments on the rest, but the first  
10 couple of sentences: So we have, you know, management fees,  
11 and it varied; it would be like 2 percent. Sometimes we bumped  
12 it up to 4, 5, depending on what the underlying business was.  
13 We took fees at the time that were a little lower when we had a  
14 standstill. That part, I think, and even beyond that is  
15 responsive.

16 MR. DiMASE: Your Honor, may I have one moment to  
17 discuss?

18 THE COURT: Sure.

19 (Counsel confer)

20 MR. DiMASE: Your Honor, the government takes the same  
21 position here again. The question is: You're the guy?  
22 Absolutely, I'm the guy. Then the next question is: You're  
23 the guy, there was no one else working with you? And he says:  
24 I'm the guy. And then he pivots to a lengthy self-serving and  
25 sua sponte exculpatory riff on his involvement, including such

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1 matters as Brexit, and tax returns, and other such irrelevant  
2 matters that are not necessary to understand the remainder of  
3 the statement.

4 THE COURT: What about the first three sentences  
5 there: No, I'm the guy. So we have -- you know, naturally, it  
6 varied; it would be like, you know, 2 percent, sometimes we  
7 bumped it up to 4 or 5, depending on what the underlying  
8 business was. We took fees at the time that they were a little  
9 lower when we had a standstill?

10 MR. DiMASE: Your Honor, I understand the rationale  
11 behind cutting it there. We would argue that that is -- it's  
12 not responsive to the question, it's not necessary to  
13 understand the remainder of the passage that is admitted. So  
14 we would argue it should be kept out, but if the Court is  
15 inclined to admit any portion of this long, green paragraph  
16 here, that would certainly be more appropriate than admitting  
17 the entire thing.

18 THE COURT: I understand that the agents actually  
19 changed the topic about fees, but I think, in fairness, you  
20 ought to be allowed to say that, so I will allow that portion  
21 of the testimony in unless, Mr. Devlin-Brown, you choose, for  
22 reasons satisfactory to yourself, not to.

23 MR. DEVLIN-BROWN: We would like that portion, your  
24 Honor. I respectfully ask you just to look at the next two  
25 sentences, because they are responsive. He says: I informed

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1 the investors with a letter saying we had the Brexit issue, so  
2 we're going to reduce our fees for that time. And we took a  
3 large fee because at the end, I mean, I'm dramatic because the  
4 investors decided to break up. That's where he answers the  
5 whole fee question. Again, he was cut off by the agent  
6 mid-answer before disagreement about singular versus plural, so  
7 I do think it's fair to go that far.

8 THE COURT: I will not --

9 MR. DiMASE: Sorry, we would strongly oppose the  
10 admission of those clearly self-serving statements. They pivot  
11 to another topic area like Brexit, and it's not necessary to  
12 understand the remainder of this passage, and I think where the  
13 Court originally cut is a more appropriate place.

14 THE COURT: That's where we will cut it off.

15 MR. DiMASE: Thank you.

16 THE COURT: Okay?

17 MR. DiMASE: So after the word "standstill"?

18 THE COURT: Correct, after the word "standstill."

19 I think that covers everything. Let me ask, just  
20 because I ask at every --

21 MR. DiMASE: Judge, there's one other thing that  
22 was --

23 THE COURT: Sure.

24 MR. DiMASE: If you'd like to address whatever you  
25 want --

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1 THE COURT: No, no, we have to address some technical  
2 issues concerning jury selection, et cetera.

3 MR. DiMASE: Understood.

4 I don't know there's any court involvement needed on  
5 the remaining submissions, which were about the bank fraud  
6 charged in this case and the law around it. I think that those  
7 are really more accurately categorized as jury instruction  
8 issues.

9 THE COURT: I agree.

10 MR. DiMASE: I don't know we need to take them up  
11 today, but I just wanted to raise them since they are before  
12 the Court.

13 THE COURT: Right. I was going to do those during the  
14 charge conference. Okay?

15 MR. DiMASE: Yes, your Honor.

16 THE COURT: Like I started to say, I ask at every  
17 final pretrial conference: Are the parties fairly confident  
18 that there will be a trial starting next Monday? I ask because  
19 I'll be working on this for the remainder of the week, unless  
20 you tell me otherwise.

21 MR. DiMASE: Your Honor, as far as the government  
22 knows, there will be a trial starting next Monday. And just  
23 for the record, there have not been any plea offers made in  
24 this case to date, and so there's no reason the government  
25 expects there to be a resolution between now and the trial

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1 date.

2 THE COURT: Very well.

3 So now let's talk about jury selection, et cetera. On  
4 the representation that this case could take as many as three  
5 weeks, I thought that four alternate jurors was appropriate and  
6 also because of the holidays, unless the parties have strong  
7 feelings, one way or the other, on that.

8 MR. GARVIN: Your Honor, it sounds fine with the  
9 defense.

10 THE COURT: Okay.

11 As the parties are aware, I do use the venire  
12 questionnaire. By the way, I should probably say that the  
13 motion for jury questionnaire was denied since we're not going  
14 to be using it. And I do use the strike method. In this case,  
15 the government will have six peremptories and the defense ten.  
16 So if everyone uses their peremptories, assuming we put X  
17 number of people in the box, we'll have 28 individuals in the  
18 box that are potential jurors. And I'll give each side one  
19 peremptory for alternates, so we'll have another six potential  
20 alternate jurors in the box for purposes of peremptories, so  
21 there will be a total of 34 people in the box. They will be  
22 numbered 1 through 34, for purposes of your charting. What I  
23 will do is I will go through with the first potential juror  
24 each of the questions in part 1 of the questionnaire, and I  
25 will instruct the venire to listen very carefully, because,

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1 starting with the second potential juror, I will only ask those  
2 questions as to which he or she has a positive or an  
3 affirmative response, so that we're not going through every  
4 question with every potential juror.

5 We will strike for cause as we go along, so if we  
6 determine that potential Juror No. 2 needs to be dismissed for  
7 cause, he or she will be replaced immediately, and I will ask  
8 the person who replaces him or her whether they have any  
9 affirmative responses to the part 1 questions on the  
10 questionnaire, and we'll go through that process until we have  
11 34 people in the box that, arguably, are clean; that is to say,  
12 that are not subject to being struck for cause. And once we  
13 have 34 people that fit that bill, I will start again with  
14 Juror No. -- potential Juror No. 1, and then ask that person  
15 every question on part 2, and ask every subsequent juror every  
16 question on part 2, so that you are able to get a sense of who  
17 these people are.

18 It is sometimes the case that some responses to part 2  
19 elicit someone being stricken for cause. It's unlikely, but  
20 all the other jurors will be here during that process, so if we  
21 need to replace a person, we can replace that person even with  
22 respect to part 2. And then if everyone uses their  
23 peremptories, we will be left with 16 people in the box. The  
24 first 12 will be our jurors. And you will separately choose  
25 the main juror and then the alternate jurors. Okay?

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1           Like I said, opening arguments, I won't put a time  
2 limit. It seems to me, as I said earlier, 20-25, 25-30 minutes  
3 is an appropriate time to open in a case like this. Hopefully,  
4 we'll get the openings in on Monday. In the unlikely event  
5 that we finish up with jury selection very quickly, I have a  
6 witness here, to put that person in the box. I will tell the  
7 jury to be here every day no later than a quarter after 9:00 or  
8 20 after 9:00, so we can start at 9:30. I start on time every  
9 day with the jurors. I bring them out at 9:30; I send them  
10 home at 2:30.

11           If everything goes according to Hoyle, the day will go  
12 as follows: We'll start with the jury at 9:30, break at 11:00,  
13 break for 15 minutes, start again at 11:15, go to 12:45, break  
14 for 15 minutes, start again at 1:00, end at 2:30. I will  
15 expect the lawyers to be here no later than 9:00 a.m. every day  
16 in case anything needs to be done. Something always comes up,  
17 and so I find we are always using that time between  
18 9:00 o'clock and 9:30.

19           In terms of -- I forget exactly how 318 or 316 is set  
20 up. I don't chain lawyers to the podium, so I will allow you  
21 to have -- exhibit some of your personal style to the jurors,  
22 such as it may be, but don't take too much advantage of that.  
23 You don't have to ask for permission every time you approach  
24 the witness, but you should do it early on, so that the witness  
25 is aware of what's happening.



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1 And, obviously, no speaking objections. If there's an  
2 objection, you can object, say hearsay, say asked and answered.  
3 Don't argue beyond that. If we need to argue beyond that,  
4 we'll argue at sidebar.

5 Any questions on that?

6 MR. DiMASE: I had two questions, your Honor.

7 One, with respect to publishing exhibits that are in  
8 evidence, what's the Court's position on requesting permission  
9 to do so versus simply doing so?

10 THE COURT: As long as something is in evidence,  
11 that's clearly in evidence, you don't have to ask permission,  
12 although it's probably good form, just that the jury knows  
13 what's going on, that you're showing them a document that's  
14 already been admitted into evidence.

15 But, obviously, make sure that you know the technology  
16 sufficiently, so that you aren't putting anything before the  
17 jury that has not been admitted.

18 MR. DiMASE: Understood, your Honor.

19 THE COURT: Yes?

20 MR. DiMASE: Just one question on the Court's practice  
21 in jury selection and exercising peremptory challenges: How  
22 does the ordering of the exercise of challenges go? Different  
23 judges do it differently.

24 THE COURT: We'll go back and forth. It will be done  
25 in rounds, rather than go back and forth, defense goes,

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1 government goes, defense goes, government goes --

2 MR. DiMASE: I understand.

3 THE COURT: -- until all the peremptories are  
4 completed.

5 MR. DiMASE: Thank you.

6 MR. DEVLIN-BROWN: One other logistical question.

7 THE COURT: Sure.

8 MR. DEVLIN-BROWN: Your Honor, we have received the  
9 government's initial set of exhibits, which are disturbingly  
10 voluminous. We haven't even attempted to print all of them yet  
11 because they're bank statements and things of that nature. We  
12 will have our own exhibits. Does the Court have preferences  
13 for getting a catalog of exhibits, seeing them before each  
14 witness, getting them electronically in addition?

15 THE COURT: Don't bother sending them to me  
16 electronically because I won't have that technology -- I won't  
17 be using that technology on the bench, but if you have a set of  
18 exhibits -- a separate set of exhibits, I'm happy to receive  
19 it.

20 MR. DEVLIN-BROWN: Thank you, your Honor.

21 MR. DiMASE: Judge, on that point, I would just note  
22 that we do have a large volume of bank records because of the  
23 number of bank accounts involved in this scheme, and it's our  
24 current intention to admit them in electronic format.  
25 Obviously, if the Court or a witness needs a paper version for

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1 some reason during trial, we can always get that, but to save  
2 trees and everyone's time, and not have to carry large binders  
3 full of bank records, we think that the electronic way --

4 THE COURT: That's fine. I don't need 20 binders of  
5 bank records.

6 MR. DiMASE: Understood, your Honor. I figured as  
7 much.

8 THE COURT: Okay.

9 Anything else?

10 MR. DiMASE: No, nothing from the government.

11 THE COURT: Okay. I don't think I have anything else  
12 myself. So we will adjourn.

13 Again, you let me know if there's any movement in  
14 terms of disposition, and, obviously, whatever other  
15 applications are going to be made, get those papers to me as  
16 soon as possible, and do get back to me on the voir dire  
17 questionnaire within the next couple of days, both to point out  
18 any typos, any grammatical errors, and to provide the list of  
19 individuals, and entities, and locations that will be discussed  
20 during the trial.

21 And I am otherwise available to you at your request.  
22 We are adjourned.

23 COUNSEL: Thank you.

24 \* \* \*